

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-7007

United States Court of Appeals

B.
P/S

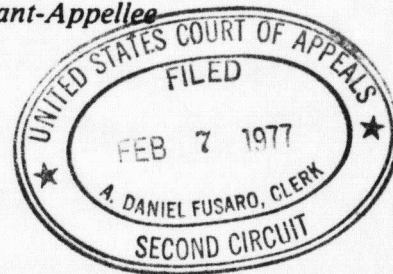
For the Second Circuit

HARTFORD NATIONAL BANK & TRUST COMPANY,
Plaintiff-Appellant

against

WESTCHESTER FEDERAL SAVINGS & LOAN ASSOCIATION,
Defendant-Appellee

On Appeal from the United States District Court
for the Southern District of New York



JOINT APPENDIX

William M. Ivler, Esq.
Attorney for Plaintiff-Appellant
300 Broad Street
Stamford, Connecticut 06901
(203) 324-3111

Victor N. Pacor, Esq.
PACOR & DEL VECCHIO
Attorneys for Defendant-Appellee
56 Harrison Street
New Rochelle, New York 10801
(914) 636-2110

PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date:

JUDGE DUFFY
1-a
74 CIV. 3900

D. C. Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

HARTFORD NATIONAL BANK AND TRUST COMPANY WILLIAM M. TYLER

VS.

For plaintiff:
375 Park Avenue, N.Y.C.
-or- 300 Broad St-Stamford, Conn. 06901
(203) 324-3111

WESTCHESTER FEDERAL SAVINGS & LOAN ASSOCIATION

12/28

For defendant:
PACOR & DEL VECCHIO
56 Harrison St-New Rochelle, N.Y. 10801
(914) 636-2110

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

DISB.

J.S. 5 mailed X

Clerk

9/9/74 Wm Tyler
9/10/74 UCV

J.S. 6 mailed ✓

Marshal

Basis of Action:
BREACH OF CONTRACT.

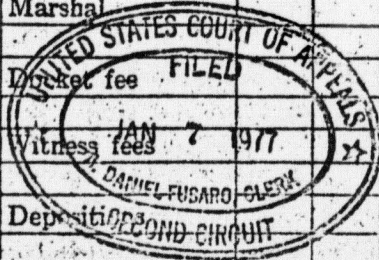
Docket fee

Witness fees

Action arose at:

Depositions

SECOND CIRCUIT



HARTFORD NATIONAL BANK & TRUST COMPANY, VS. WESTCHESTER FEDERAL SAVINGS & LOAN ASSOCIATION

74 CIV. 391

DATE	PROCEEDINGS	Date Order of Judgment Noted
9-7-74	Filed Complaint. Issued Summons.	
25-7-74	Filed summons and return- served: Westchester Federal Savings & Loan Assoc. by Hal Hahn on 9-13-74	
7-7-74	Filed ANSWER of deft.	
21-7-75	Filed plttf's affdvt. and notice of motion for an order for summary judgment under Rule 56 FRCP. Ret. 11-11-75	Rule 56
Nov. 10-75	Filed deft's affdvt. of Raymond W. Kerr in opposition to motion for summary judgment and in support of deft's counter motion.	
Nov. 17-75	Filed plttf's responding affdvt. of William M. Ivler in support of motion for summary judgment and in response to deft's answering affdvt.	
Nov. 17-75	Filed deft's reply affdvt. of Victor N. Pacor in opposition to plttf's motion and in reply to responding affdvt. of plttf.	
Dec. 02-75	Filed Memo Endorsed on Motion for summary judgment filed 10-21-75..... It appears that there are issues of fact concerning the acknowledgment of the pledge which preclude summary judgment under Rule 56, Fed.R.Civ. A further ground for this denial is the failure of both parties to comply with Rule 9(b) and (g), Gen. Rules for the SD of NY. So Ordered. DUFFY, J.	
Jan. 14-76	PRE-TRIAL CONFERENCE HELD BY DUFFY, J.	
Jan. 19-76	BEFORE DUFFY, J. Non-jury trial begun and concluded. Judge's decision reserved.	
Jan. 31-76	Filed transcript of proceedings. 1-19-76	
Feb. 19-76	Filed Opinion and Order - opinion No. 45259 ... This is a diversity action between Hartford National Bank & Trust Co. and Westchester Fed. Savings & Loan Assn. over a sum on deposit at the Westchester Bank which was allegedly pledged to the Hartford Bank by a depositor etc. I find as a matter of fact and of law that the Hartford National Bank cannot enforce its claim to these rent security deposits. Settle judgment for deft on notice. DUFFY, J. m-n	
Feb. 22-76	Filed plttf's atty. notice of change of address.	
Feb. 29-76	Filed Judgment - that the deft. have judgment against plttf. dismissing the complaint plus costs and disbursements to be taxed. DUFFY, J. Judgment entered 11-29-76. Clerk (m/n)	
Feb. 28-76	Filed plttf's notice of appeal to USCA from the judgment entered on 11-29-76. Copy to : Victor N. Pacor, Esq. of acer & Del Schio. Ent. 12-28-76	
Mar. 3-76	Filed duplicate-original undertaking for cost on appeal in the sum of \$250.00- Fidelity and Deposit Company of Maryland.	

A TRUE COPY
RAYMOND E. DUFFY, JR.

County Clerk

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARTFORD NATIONAL BANK
AND TRUST COMPANY,
Plaintiff

- against -

WESTCHESTER FEDERAL SAVINGS
& LOAN ASSOCIATION,
Defendant

CIVIL ACTION NO. 74 CIV 3900

COMPLAINT

Plaintiff, by its attorney, William M. Ivler, complaining of the defendant, alleges for its complaint:

1. Plaintiff is a corporation organized and existing under the laws of the United States and maintains its principal place of business in the State of Connecticut.

2. Upon information and belief, defendant is a savings and loan association organized and existing under the laws of the United States and maintains its principal place of business in the County of Westchester in the State of New York.

3. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars.

4. On or about May 21, 1971, Hyde Park Company, a limited partnership of which Herbert Stoll was the general partner, had on deposit with defendant under Savings Account #450,964 MO a sum in excess of \$38,265.00.

5. On or about May 21, 1971, said Hyde Park Company executed a pledge of said savings account to plaintiff, copy attached hereto as Exhibit A, and made a part hereof, as if fully set forth herein.

6. On or about May 21, 1971, a Notice of Pledge, copy attached hereto as Exhibit B, and made a part hereof, as if fully set forth herein, was executed by plaintiff and given to defendant.

7. On or about May 21, 1971, defendant received said notice and acknowledged receipt thereof as set forth in Exhibit C attached hereto and made a part hereof as if fully set forth herein.

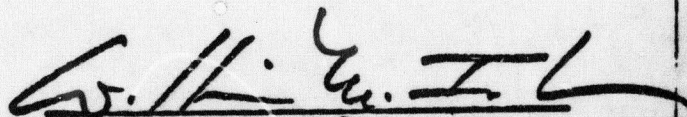
8. On July 18, 1974, there was on deposit in said savings account funds in excess of \$43,141.32

9. On July 18, 1974, plaintiff presented the passbook of said savings account to defendant and demanded the funds in said savings account together with accrued interest.

10. On July 18, 1974, defendants refused to pay over to plaintiff the proceeds on deposit in said savings account together with the accrued interest.

Wherefore plaintiff demands judgment for \$43,141.32 with interest or in the sum of the total proceeds being held by defendant in said savings account together with accrued interest, whichever shall be greater, together with the costs and disbursements of this action.

WILLIAM M. IVLER
ATTORNEY AT LAW


William M. Ivler
Attorney for Plaintiff
375 Park Avenue
New York, New York

A

ORIGINAL

PLEDGE OF SAVINGS ACCOUNT

TO

HARTFORD NATIONAL BANK AND TRUST COMPANY

Atlantic Street OFFICE

Stanford, Conn., 19

TO

Westchester Federal Savings & Loan Assoc.

New Rochelle, New York

FOR VALUE RECEIVED, ON SAVINGS ACCOUNT NO. #450,964MO
 HARTFORD NATIONAL BANK AND TRUST COMPANY, THE BALANCE TO MY CREDIT WITH SUBSEQUENT A CRU
 DIVIDENDS OR INTEREST THEREON.

THIS ORDER, TOGETHER WITH THE DEPOSIT BOOK NUMBERED AS ABOVE, HAS BEEN DELIVERED TO
 HARTFORD NATIONAL BANK AND TRUST COMPANY, AS COLLATERAL SECURITY FOR MY OBLIGATION OR OBLIG
 TIONS TO SAID BANK.

WITNESS:

Hyde Park Company
 Signature of Depositor on Book

Exhibit A

NOTICE OF PLEDGE

Hartford

CONN.

19

TO

West Center Federal Savings & Loan Assoc.

New Rochelle, New York

THERE HAS BEEN PLEDGED TO THE UNDERSIGNED THE SAVINGS DEPOSIT OF
Hyde Park Company C/O Herb Stoll

IN YOUR BANK EVIDENCED BY

YOUR PASS BOOK NO. #450,964MO SAID PASSBOOK HAVING BEEN DELIVERED TO THE UNDERSIGNED WITH
AN ORDER FOR THE TRANSFER OF SUCH DEPOSIT. A COPY OF WHICH ORDER IS HERewith FILED WITH YOU
YOU ARE REQUESTED TO SIGN AND RETURN THE COPY ENCLOSED, WHICH IS HEADED "RECEIPT OF NOTICE"

HARTFORD NATIONAL BANK AND TRUST COMPANY

Atlantic Street

Office

BY

[Signature] Asst. Vice Pres.

OFFICIAL CAPACITY

Exhibit B

C

RECEIPT OF NOTICE
New Rochelle, New York
CONN., May 21, 1971

Westchester Federal Savings and Loan Association ACKNOWLEDGES THAT A COPY OF
THE ABOVE ORDER FOR TRANSFER HAS BEEN FILED WITH IT. THE COPY OF SIGNATURE(S) AS SHOWN ABOVE A DEAR
TO COMPARE CORRECTLY WITH SIGNATURE(S) ON FILE WITH US. THE PRESENT BALANCE IN SAID ACCOUNT IS
\$38,265.00

Westchester Federal Savings and Loan Association
BANK OF DEPOSIT

BY: G. M. Mac - DeThunder

OFFICIAL CAPTION

Exhibit C

SUMMONS AND RETURN

United States District Court

FOR THE
SOUTHERN DISTRICT OF NEW YORK

JUDGE DUFFY

74 CIV. 3900

CIVIL ACTION FILE NO. _____

HARTFORD NATIONAL BANK AND TRUST COMPANY,

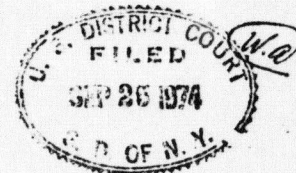
Plaintiff

v.

WESTCHESTER FEDERAL SAVINGS & LOAN
ASSOCIATION,

Defendant

SUMMONS



To the above named Defendant :

You are hereby summoned and required to serve upon William M. Ivler

plaintiff's attorney , whose address is 375 Park Avenue, New York, New York.

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

RAYMOND F. BURCHARD

Clerk of Court
R. Burchard

Deputy Clerk

Date: September 9th, 1974

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(2)

U.S. MARSHALS SERVICE

INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF

DEFENDANT

HARTFORD NATIONAL BANK & TRUST COMPANY

COURT NUMBER 9-2

WESTCHESTER FEDERAL SAVINGS & LOAN ASSOC.

TYPE OF WRIT C & C

SERVE

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN



WESTCHESTER FEDERAL SAVINGS & LOAN ASSOCIATION

AT

MAIN & HUGHES STS.
NEW ROCHELLE, N.Y.

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

WILLIAM M. IVLER
125 STRAWBERRY HILL AVE.
STAMFORD, CT. 06902

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 2, etc. NO. 1 TOTAL 1

CHECK IF APPLICABLE:
☐ One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR

A. J. ...

TELEPHONE NUMBER (203) 227-0600 DATE 9/17/74

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted. I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.

DEPOSIT/CODE DIST. OF ORIGIN DISTRICT TO SERVE LOCATION OF SUB-OFFICE OF DIST. TO SERVE

SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK DATE 9/19/74

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this judicial district.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above)

Michael Rubin Mgr. for Westchester Federal Savings

ADDRESS (Complete only if different than shown above)

Age of minor of suitable age and description then adding in the defendant's usual place of abode. FEE (if applicable) \$ 3.00 MILEAGE \$ 6.00

DATE(S) OF ENDEAVOR (Use Remarks if necessary)

DATE OF SERVICE TIME 9/13/74 4:50 PM

SIGNATURE OF U.S. MARSHAL OR DEPUTY

REMARKS

USM-285 (E. 7-1-70)

1. CLERK OF THE COURT

... and it is together with the complaint herein as follows:

10

day of

month of

RETURN ON SERVICE OF WRIT

ANSWER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARTFORD NATIONAL BANK and
TRUST COMPANY,

Plaintiff,

- against -

WESTCHESTER FEDERAL SAVINGS
& LOAN ASSOCIATION,

Defendant.

HONORABLE
Judge Duffy

CIVIL ACTION NO. 74-CIV 3900

ANSWER

Defendant, by its attorney, Victor N. Pacor, a member of the firm of Pacor & Del Vecchio, answers the plaintiff's complaint:

1. Admits the allegations of paragraphs 2, 3, 7, 8, 9, and 10.
2. States that defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1.
3. States that it is without knowledge or information sufficient to form a belief as to paragraph 5.
4. Denies paragraph 6, except admits that defendant received an undated Notice of Pledge.
5. Denies paragraph 4 of the complaint, except admits that defendant had on deposit under Savings Account No. 450,964MO a sum in excess of \$38,265.00.
6. The plaintiff herein is allegedly the successor in interest of Savings Account No. 450,964MO opened by Hyde Park Company, as a rent security account with defendant.
7. That Hyde Park Company was the owner of an apartment house located at Northhill Street and Knapp Street, Stamford, Connecticut, on which property defendant held a first mortgage

lien in the sum of approximately \$2,300,000.00.

8. That defendant instituted a foreclosure proceeding against Hyde Park Company on or about October 1, 1973.

9. That subsequent to the foreclosure proceeding and simultaneously with entering a foreclosure judgment against Hyde Park Company, the Superior Court, Fairfield County at Stamford, Connecticut, Justice Tunic presiding, appointed plaintiff's attorney a co-receiver of rents for Hyde Park Company.

10. That Hyde Park Company deposited with the defendant herein, the sum of approximately \$38,265.00, in an account which was titled "Hyde Park Company, Rent Security Deposit", a copy of account record is attached hereto and marked Exhibit I.

11. That the moneys held by defendant in the savings account are trust moneys, which will have to be returned to tenants leasing or occupying apartments in the building formerly owned by Hyde Park Company.

12. That the co-receivers, the attorney for the plaintiff in this action, William M. Ivler and Frederick Tobin, are in the process of submitting an accounting to the Superior Court, State of Connecticut, in conjunction with the foreclosure proceedings, wherein provisions for the disposition of the rent security deposits will have to be made.

13. The Superior Court, State of Connecticut, has sole jurisdiction over the disposition of the rent security account.

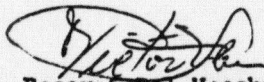
14. Plaintiff knew, or should have known, that the account pledged by Hyde Park Company to the plaintiff herein, was a rent security account and therefore trust money, which was not pledgable or assignable.

15. Plaintiff's attorney, in acting in the capacities of receiver of rents and also as attorney for the plaintiff herein is in the untenable position of having a conflict of interest.

On the one hand, he is responsible to account for rent security deposits to the Superior Court of the State of Connecticut and on the other hand, makes claim on said rent security moneys on behalf of a third party, pledgee, against his interest as receiver. The conflict of interest must, of necessity, mitigate against the persons rightfully entitled to the funds on deposit in Savings Account No. 450,964MO, the tenants. They having deposited rent security with the owner of the property which must be returned to them at the termination of their occupancy.

WHEREFORE, defendant demands judgment dismissing plaintiff's complaint and demands the courts render a declaratory judgment, declaring the funds on deposit with the defendant in Savings Account No. 450,964MO are trust moneys, which may not be pledged or incumbered, and rightfully belong to the tenants who deposited them. In the alternative, the Court declare the moneys on deposit, be turned over to the new owners of premises located at Northhill Street and Knapp Street, Stamford, Connecticut, who are the successors in interest to Hyde Park Company, and such other and further relief as this Court may deem just and proper in the premises, together with costs and disbursements of this action.

Dated: New Rochelle, N. Y.


Victor A. Vecchio, Esq.
Attorneys for Defendant
56 Harrison Street
New Rochelle, N. Y. 10801

FIDUCIARY ACCOUNT

Account No. 450,964

Mr. HYDE PARK COMPANY (RENT SECURITY ACCOUNT)

Mrs. (1) (To be typed)

Mr. (2) (To be typed) (Last Name) (First Name) (Middle Name)

As Executor(s) of the Will ☐ As Administrator(s) of the Estate ☐ As Guardian(s) of the Person and Property ☐

As Trustee(s) under the Will ☐ As Trustee(s) under Deed of Trust ☐ As Landlord with security rents of tenants under leases ☒ As Employee ☐ As Representative Payee under S.S.A. ☐ As ☐

I, the undersigned, whose specimen signature appears below, hereby apply for a Savings Account in WESTCHESTER FEDERAL SAVINGS AND LOAN ASSOCIATION and agree to be governed by the Association's charter and by-laws. It is agreed that all transactions relating to the account shall also be governed by the terms on the reverse side hereof. (over)

Signature (1) C/O HERBERT STOLL

Street Address 125 STRAWBERRY HILL AV

City State Zip Code

Signature (2) [Signature]

Street Address [Signature]

City State Zip Code

Counter-signature or Court Order required

Dated: APR 12 1973

Exhibit 1(a)

WATCH

RENT SECURITY ACCOUNT

NAME HYDE PARK COMPANY

ACCT. NO. 450,964/NO

C/O HERBERT STOLL

DATE 4/12/71

ADDRESS 125 STRAWBERRY HILL AVE.

STAMFORD CONN.

CO-SIGNATURE OF MORTGAGE DEPT. REQUIRED NO WITHDRAWALS

	DATE	WITHDRAWAL	DIVIDENDS	PAYMENTS	BALANCE
1	APR 12-71	NEW			
2			286.99	538,265.00	*38,265.00
3	JUN 28-71		***286.99		*38,551.99
4	DEC 28-71		867.40 ***867.40		*39,419.39
5					
6					
7					
8					
9					
10					
11					
12					

WESTCHESTER FEDERAL SAVINGS AND LOAN ASSOCIATION

13					
14					
15					
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21					
22					
23					
24					

SIGNATURE
SIGN HERESIGNATURE
SIGN HERE

FIDELITY, INC.

Exhibit 1(b)

PLAINTIFF'S AFFIDAVIT OF WILLIAM C. STEVENS;
NOTICE OF MOTION FOR AN ORDER OF SUMMARY
JUDGMENT WITH ENDORSEMENT THEREON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARTFORD NATIONAL BANK AND
TRUST COMPANY,
Plaintiff,

-against-

WESTCHESTER FEDERAL SAVINGS &
LOAN ASSOCIATION,
Defendant.

MOTION FOR SUMMARY JUDGMENT
UNDER RULE 56 FRCP

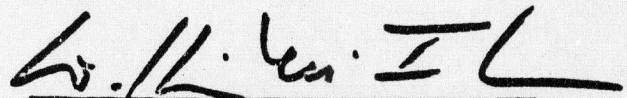
Civil Action No.

74 Civ. 3900 (K.T.D.)

SIRS:

PLEASE TAKE NOTICE that plaintiff shall move for summary judgment under Rule 56 of the FRCP upon the attached affidavit of William C. Stevens, sworn to October 13, 1975 on Tuesday, November 11, 1975 at the United States District Courthouse, Foley Square, New York, N.Y.

New York, N.Y.
October 17, 1975



William M. Ivler
Attorney for Plaintiff
Office & P.O. Address
375 Park Avenue
New York, N.Y.
(203) 327-0600

TO:
Pacor & Del Vecchio, Esqs.
Attorneys for Defendant
56 Harrison Street
New Rochelle, N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARTFORD NATIONAL BANK AND
TRUST COMPANY,
Plaintiff,
- against -
WESTCHESTER FEDERAL SAVINGS
& LOAN ASSOCIATION,
Defendant.

AFFIDAVIT IN SUPPORT
OF PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

Civil Action No.

74-Civ. 3900 (K.T.D.)

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) ss.:

WILLIAM C. STEVENS, being duly sworn, deposes and says,
that:

1. I was a vice-president and the Regional Loan Officer for the plaintiff, Hartford National Bank and Trust Company (hereinafter referred to as HNB), am fully familiar with all the facts hereinafter set forth and make this affidavit in support of plaintiff HNB's motion for summary judgment herein.

2. Prior to May 21, 1971, Hyde Park Company, a limited partnership, by Herbert Stoll, the general partner thereof, sought a loan from plaintiff HNB in the sum of \$35,000. I, on behalf of plaintiff, requested security for said loan. Mr. Stoll advised me that said limited partnership had a savings account with defendant Westchester Federal Savings & Loan Association (hereinafter referred to as WFS&LA) bearing savings account number 450,964 MO and exhibited the passbook to me. The full inscription describing the account was "HYDE PARK COMPANY, C/O HERBERT STOLL".

3. At that time, said passbook indicated deposits of \$38,265.00.

4. The Hyde Park Company, by said Herbert Stoll, thereupon executed plaintiff's standard form of "Pledge of Savings Account and Notice of Pledge". Attached hereto as Exhibit A are photocopies of said forms which were addressed to defendant WFS&LA. Said Pledge directs defendant to transfer said account to plaintiff and said Notice advises defendant of the pledge and the delivery to plaintiff of the passbook.

5. I mailed the original Pledge and Notice (Exhibit A) to defendant WFS&LA and received by mail the executed Receipt of Notice (attached hereto as Exhibit B) and a separate letter from John J. Phelan, general counsel for defendant, dated May 21, 1971 acknowledging the receipt of the Notice of Pledge (copy of said letter attached hereto as Exhibit C). Upon the receipt of said documents, plaintiff HNB made a secured loan of \$35,000 to Hyde Park Company holding as security said assigned savings account.

6. At no time, either orally or in writing, did Mr. Phelan or any other person on behalf of defendant, at that time, advise me, or any other person on behalf of plaintiff, that there were any conditions or limitations on the transfer or pledge of said savings account and passbook of Hyde Park Company.

7. Based upon the execution of the above documents by Hyde Park Company and the defendant WFS&LA and the receipt of the aforesaid Notice of Receipt and Mr. Phelan's aforesaid letter, both dated May 21, 1971, plaintiff made the aforesaid \$35,000 loan to Hyde Park Company.

8. In July, 1974, the Hyde Park Company was in default of said loan made by it to plaintiff, and on behalf of plaintiff, I personally went to the defendant's principal office, presented the aforesaid passbook and made demand upon defendant on behalf of the plaintiff for all the monies on deposit in said account.

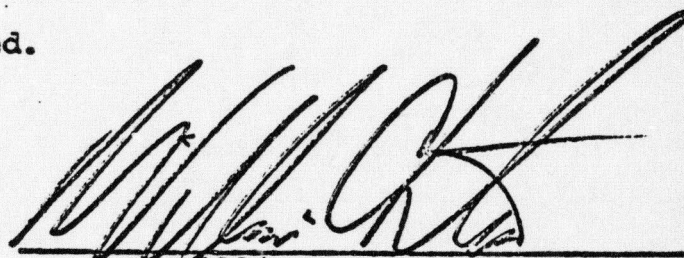
9. At that time, the aforesaid John J. Phelan, Esq. refused to turn over the proceeds of said savings account and showed me a copy of a letter on the stationery of defendant (copy attached as Exhibit D) which contained conditional language in respect to the Receipt of Notice, which did not appear in the letter sent to me on behalf of plaintiff, HNB (Exhibit C). Neither I, nor any officer or employee, was ever made aware of the original of said second letter nor the reservation contained therein, nor was the original of said Exhibit D ever mailed to or received by plaintiff.

10. Defendant, in its answer herein, seeks to bring into this action its claim that said passbook and the proceeds thereof were "rent security deposits" for the building then owned by Hyde Park Company in Stamford, Connecticut and that for some unnamed reasons based either in fact or law, defendant does not have to honor the Pledge of the savings account to plaintiff. At no time prior to the aforesaid demand, were these contentions ever made to me or anyone else on behalf of plaintiff. The passbook was devoid of any designation indicating same was a "rent security Deposit account" or that the use of the proceeds were restricted in any way. If such legends had appeared on the passbook, or if such statements had been made, or if the second letter of May 21,

1971 had ever been delivered to me or the contents thereof disclosed to me, I, on behalf of plaintiff, HNB, would never have made the loan to Hyde Park Company, nor would I have accepted the pledge of the savings account.

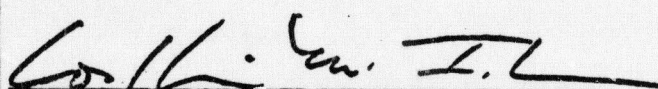
11. Defendant accepted the pledge and transfer of said savings account without reservation or condition, and plaintiff relied thereon in making its secured loan of \$35,000 to Hyde Park Company.

Wherefore, plaintiff respectfully requests that its motion for summary judgment be granted.



William C. Stevens

Sworn to before me this
13th day of October, 1975



William M. Ivler
Commissioner of Deeds-Fairfield
County

ORIGINAL

PLEDGE OF SAVINGS ACCOUNT
TO

HARTFORD NATIONAL BANK AND TRUST COMPANY

Atlantic Street OFFICE

Stamford,

CONN.,

19

TO

Westchester Federal Savings & Loan Assoc.

New Rochelle, New York

FOR VALUE RECEIVED, ON SAVINGS ACCOUNT NO. #450,964MO TRANSFER TO
HARTFORD NATIONAL BANK AND TRUST COMPANY, THE BALANCE TO MY CREDIT WITH SUBSEQUENT ACCRUAL
DIVIDENDS OR INTEREST THEREON.

THIS ORDER, TOGETHER WITH THE DEPOSIT BOOK NUMBERED AS ABOVE, HAS BEEN DELIVERED TO SAID
HARTFORD NATIONAL BANK AND TRUST COMPANY, AS COLLATERAL SECURITY FOR MY OBLIGATION OR OBLIGA
TIONS TO SAID BANK.

WITNESS:

Hyde Park Company
[Signature]

B

NOTICE OF PLEDGE

Stamford

CONN.,

19

TO

Westchester Federal Savings & Loan Assoc.

New Rochelle, New York

THERE HAS BEEN PLEDGED TO THE UNDERSIGNED THE SAVINGS DEPOSIT OF
Hyde Park Company C/O Herb Stoll

IN YOUR BANK EVIDENCED BY

YOUR PASS BOOK NO. #450,964MO SAID PASSBOOK HAVING BEEN DELIVERED TO THE UNDERSIGNED WITH
AN ORDER FOR THE TRANSFER OF SUCH DEPOSIT, A COPY OF WHICH ORDER IS HERewith FILED WITH YOU.
YOU ARE REQUESTED TO SIGN AND RETURN THE COPY ENCLOSED, WHICH IS HEADED "RECEIPT OF NOTICE."

HARTFORD NATIONAL BANK AND TRUST COMPANY

Atlantic Street

OFFICE:

BY

[Signature] Asst. Vice Pres.

(OFFICIAL CAPACITY)

EXHIBIT A

C

RECEIPT OF NOTICE
 New Rochelle, New York
 CONN., May 21 1971

Westchester Federal Savings and Loan Association..... ACKNOWLEDGES THAT A COPY OF
 THE ABOVE ORDER FOR TRANSFER HAS BEEN FILED WITH IT. THE COPY OF SIGNATURE(S) AS SHOWN ABOVE A PEAR
 TO COMPARE CORRECTLY WITH SIGNATURE(S) ON FILE WITH US. THE PRESENT BALANCE IN SAID ACCOUNT IS
\$38,265.00

Westchester Federal Savings and Loan Association

BY *G. M. Mac Donnell*
(NAME OF DEPOSITOR)
OFFICIAL CAPACITY

EXHIBIT B



WESTCHESTER'S FINEST SERVICE

22-a

WESTCHESTER FEDERAL SAVINGS AND LOAN ASSOCIATION

NORTH AVENUE AND HUGUENOT STREET • NEW ROCHELLE, N. Y. 10802 • 914 636-6400

May 21, 1971

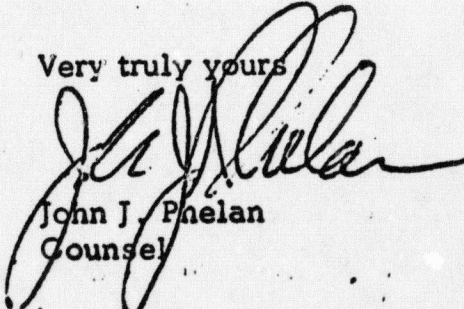
Mr. William C. Stevens
Assistant Vice President
Hartford National Bank and Trust Company
36 Atlantic Street
Stamford, Connecticut 06904

Re: Savings Account No. 450,964
Hyde Park Company
Loan No. 6058
G. S. C. Partnership

Dear Mr. Stevens:

I am returning herewith the receipt of the Notice of Pledge of the above savings account consisting of security rents under leases.

Very truly yours


John J. Phelan
Counsel

JJP:sh

Enclosure

EXHIBIT C



SCARSDALE OFFICE:
20 CHASE ROAD • SCARSDALE, N. Y. • 722-0622

NORTH END-WYKAGYL OFFICE:
NORTH AVE. AND QUAKER RIDGE RD. • NEW ROCHELLE, N. Y. • 622-9500

THE MALL AT NEW ROCHELLE
222-9500

YORKERS OFFICE:
400 SO. BROADWAY • YORKERS, N. Y. 42 • 7360

May 21, 1971

Mr. William C. Stevens
Assistant Vice President
Hartford National Bank and Trust Company
36 Atlantic Street
Stamford, Connecticut 06904

Re: Savings Account No. 450,964
Hyde Park Company
Loan No. 6058
G.S.C. Partnership

Dear Mr. Stevens:

I am returning herewith the receipt of the Notice of Pledge of the above savings account consisting of security rents under leases. The notice is accepted without waiver of any of our rights pursuant to the letter of commitment providing for said deposit.

Very truly yours,

John J. Phelan
Counsel

JJP:dcn

Enclosure

Exhibit D

NOTICE OF ENTRY

I take notice that the within is a (certified)
in the office of the clerk of the within
on 19

Yours, etc.

Office and Post Office Address

NOTICE OF SETTLEMENT

I take notice that an order

within is a true copy will be presented
at to the Hon.

Judges of the within named Court, at

day of 19

M

Yours, etc.

Office and Post Office Address

74 Civ 3900 (KTD) Year 19

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**HARTFORD NATIONAL BANK AND
TRUST COMPANY,**
Plaintiff,

**WESTCHESTER FEDERAL SAVINGS &
LOAN ASSOCIATION**

**MOTION FOR SUMMARY JUDGEMENT
AND AFFIDAVIT**

WILLIAM M. IVLER

Attorney for Plaintiff

Office and Post Office Address, Telephone

375 Park Avenue
New York, N.Y.
(203) 327-0600

To **Pacor & Del Vecchio**
56 Harrison Street

Attorney(s) for **New Rochelle, N.Y.**
Defendant

Service of a copy of the within

Dated

is hereby admitted

BEST COPY AVAILABLE

Attorney(s) for

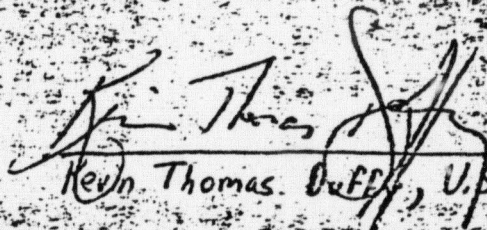
ENDORSEMENT

74 Civ. 3900

It appears that there are issues of fact concerning the acknowledgement of the pledge which preclude summary judgment under Rule 56, Fed. R. Civ. Pro.

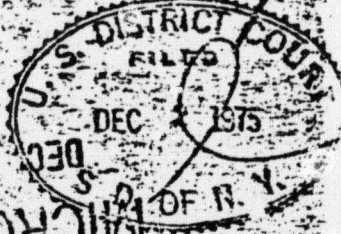
A further ground for this denial is the failure of both parties to comply with Rule 9(b) and (g), General Rules for the Southern District of New York.

SO ORDERED


Kevin Thomas Duffey, U.S.D.J.

New York, New York

November 28, 1975



MICROFILM

DEFENDANT'S AFFIDAVIT OF RAYMOND W. KERR
IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARTFORD NATIONAL BANK AND
TRUST COMPANY,

Plaintiff,

- against -

WESTCHESTER FEDERAL SAVINGS &
LOAN ASSOCIATION,

Defendant.

AFFIDAVIT IN
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT
AND
COUNTER MOTION
PURSUANT TO RULES
12H AND 67 OF THE
FRCP

Civil Action No.

74 Civ. 3900 (K.T.D.)

STATE OF NEW YORK
COUNTY OF WESTCHESTER SS:

RAYMOND W. KERR being duly sworn deposes and says:

1. I am the executive Vice-President of the defendant, Westchester Federal Savings & Loan Association, (hereinafter referred to as WFS&LA).
2. I am fully familiar with the facts and circumstances concerning this action and make this Affidavit in Opposition to the plaintiff's Motion for Summary Judgment and in support of the defendant's Counter Motion.
3. I have no knowledge of the business transaction between the plaintiff, Hartford National Bank and Trust Company (hereinafter referred to as HNB) and Hyde Park Company except for the receipt by the defendant of the undated "Notice of Pledge" and the "Receipt of Notice" a copy of which is attached to plaintiff's moving papers and marked Exhibit A therein.

4. Upon receipt of the "Notice of Pledge" and the "Receipt of Notice" defendant signed the "Receipt of Notice" and returned it to the plaintiff herein with the covering letter dated May 21, 1971. (Plaintiff's moving papers Exhibit C.)

5. The May 21, 1971 letter specifically describes the account, in question, as one "consisting of security rents under leases". This in itself was sufficient to put plaintiff on notice that conditions existed or may have existed which plaintiff should have questioned, if it were acting prudently. If plaintiff, after having received this notice did nothing further but make the loan to Hyde Park Company, it did so at its own peril. The question is not one as to who shall gain or lose but one that calls for the distribution of funds on deposit to those entitled to them.

6. In addition to the notice above referred, plaintiff acknowledged that a question existed concerning the savings account "consisting of security rents under leases." In fact at one stage plaintiff's counsel forwarded to defendant's counsel a stipulation, a copy of which is attached hereto and marked Exhibit "I", wherein plaintiff conceded that a portion of the amount on deposit in the Hyde Park Company savings account with defendant should be set aside, namely, the sum of \$5,763.00 for distribution "to tenants of Hyde Park apartments". Incidentally the proposed stipulation did not have attached thereto a list of tenants and the amounts to be disbursed to each.

7. Defendant, by its attorney, responded to the proposed stipulation by sending a letter dated May 12, 1975 to plaintiff's attorney, William M. Ivler, Esq. a copy of which is attached hereto marked Exhibit II

Plaintiff never responded to the letter nor made any comment to the conditions therein contained.

8. The issues raised by defendant in the pleadings and this answer to plaintiff's motion are such as cannot be summarily disposed of by motion but which involve triable issues which may only be resolved at a trial on the merits where testimony may be elicited and cross-examination afforded. In fact a trial wherein indispensable parties are made a part thereof. Hyde Park Company and the tenants who originally deposited security with Hyde Park Company, are indispensable parties.

9. Pursuant to Rule 12 (H) of the FRCP, defendant requests the Court order the plaintiff join Hyde Park Company and those tenants who originally deposited rent security under leases with Hyde Park Company, as indispensable parties, in this action.

10. Hyde Park Company was the owner of the apartment house in Stamford, Conn. and Hyde Park Company by Herbert Stoll received security deposits under leases from the tenants which rent security deposits were deposited with defendant WFC&LA in savings account #450964MO. At the time that the savings account was opened by Hyde Park Company with defendant herein, defendant was the first mortgagee who subsequently brought on an action in foreclosure against Hyde Park Company.

11. Defendant makes no claim of ownership, right or of any interest in the money on deposit with defendant but requests the court adjudicate as to who is entitled to the money on deposit in said savings account and in what amounts.
12. Defendant who is also the present mortgagee might be called upon, at some future date to pay over to the tenants or be liable to them for the amount of rent security which the tenants originally deposited with Hyde Park Company.
13. Pursuant to Rule 67 of FRCP, defendant respectfully shows the court:
 - A. The amount on deposit with defendant in savings account \$450964MO, in the name of Hyde Park Company, on information and belief represents rent security deposits of tenants under leases.
 - B. On information and belief the savings account was not assignable as security for a personal loan, since the money deposited was trust money held by a fiduciary, Hyde Park Company.
 - C. In the event the Court orders defendant to deliver the balance of the money, held in the savings account, to the plaintiff, the tenants who deposited rent securities under leases with Hyde Park Company may be deprived of their legal rights to have the rent security returned to them.
 - D. Defendant is entitled to be relieved from any liability or hazard of having to pay, on the savings account, a second time.
 - E. Defendant herewith tenders the total amount on deposit with it under said savings account, including accrued interest to date of tender, to the Court or its nominee.

F. Defendant prays that said tender be accepted by the Court to be held by the clerk and to be disbursed only upon order of the Court after determination by the Court of the priorities of the plaintiff and the tenants of Hyde Park Company or other appropriate proceedings.

WHEREFORE, defendant respectfully requests:

1. Plaintiff's motion for Summary Judgment to be denied in all respects.
2. Defendant's motion pursuant to Rule 12 (H) of FRCP be granted and plaintiff be ordered to make Hyde Park Company and the tenants, who originally deposited rent security with Hyde Park Company, parties hereto.
3. Defendant's motion, under Rule 67 of FRCP, be granted and defendant be permitted to deposit the money held in savings account #456096410 in the name of Hyde Park Company, with the clerk of this Court.
4. Defendant be allowed costs disbursements and reasonable legal fees in this defense of plaintiff's action.
5. Such other and further relief as this court may deem just, fair and equitable in the premises.

SI
Raymond W. Kerr

Sworn to before me

this 7th day of November, 1975.

SI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARTFORD NATIONAL BANK and
TRUST COMPANY,

Plaintiff

- against -

WESTCHESTER FEDERAL SAVINGS &
LOAN ASSOCIATION,

Defendant

STIPULATION
CIVIL ACTION NO.
74-CIV 3900

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that the above entitled action is settled upon the following terms and conditions:

1. On the execution of this agreement, defendant shall pay to plaintiff the sum of \$9,562.32 together with interest on the sum of \$45,325.32 from January 1, 1975 to this date at the rate of % per annum in full settlement of all claims plaintiff may have against defendant arising out of this action.

2. Defendant shall retain the sum of \$5,763.00, which shall be disbursed by defendant to the tenants of Hyde Park Apartments, 29 Northhill Street, Stamford, Connecticut in the sums set forth on the attached list.

WILLIAM M. IVLER
ATTORNEY AT LAW

EXHIBIT I

3. If for any reason whatsoever said sums are not returned by defendant to said tenants within sixty (60) days of the date of this stipulation, defendant shall immediately pay over any sums not so disbursed to plaintiff.

4. The within action shall be dismissed with prejudice upon the payment and the disbursing of the aforesaid sums as provided herein.

Attorney for Plaintiff

Attorney for Defendant

AGREED TO:

HYDE PARK COMPANY

By _____
Herbert Stoll, General Partner

SO ORDERED:

U. S. D. J.

WILLIAM M. IVLER
ATTORNEY AT LAW

May 12, 1975

William M. Ivler, Esq.
125 Strawberry Hill Avenue
Stamford, Connecticut 06902

Re: Hartford National Bank & Trust Co. vs. Westchester Federal
Savings & Loan Association

Dear Mr. Ivler:

Receipt of your proposed stipulation is hereby acknowledged, and pursuant to my instructions from Westchester Federal Savings & Loan Association, I make the following comments with regard thereto.

This matter, of course, can be settled on the following conditions:

- A. That you supply me with a certification by Hyde Park, the former owner of premises North Hill & Knapp Street, Stamford, Connecticut, setting forth the names of all tenants whose funds were originally deposited in the account held by the Westchester Federal Savings & Loan Association, totaling \$38,265.00, deposited on April 12, 1971.
- B. The amounts that each individual tenant deposited with Hyde Park as rent security, deposited as part of the \$38,265.00 on April 12, 1971.
- C. A certification of all tenants whose funds were originally deposited in the account held by Westchester Federal Savings & Loan Association, who are still tenants at Hyde Park, which certification will set forth the amount of the security deposit deposited by said tenants and any additional security rents which said tenants deposited due to increases under new or renewal leases.
- D. An indemnification agreement from the Hartford National Bank, indemnifying the Westchester Federal Savings & Loan Association against any losses which it may incur as a result of any demands

EXHIBIT II

PACOR & DEL VECCHIO

William M. Ivler, Esq.

May 12, 1975

P. 2

Re: Hartford National Bank vs. Westchester Federal

by tenants for a refund of their rent security to which they were entitled, other than those for which \$5,763.00 will be held by Westchester Federal Savings & Loan Association for distribution to tenants pursuant to list attached to the stipulation.

Incidentally, no list of such tenants was attached to the proposed stipulation which you forwarded me under cover of May 7, 1975.

If the terms and conditions set forth above are agreeable, and the present owner, Avis Products, Inc., consents thereto, the stipulation of settlement will be acceptable to my client.

Since the Westchester Federal Savings & Loan Association is merely a stake-holder, it will be reimbursed for legal expenses incurred in connection with the account in question.

Upon receipt of the information and certifications above enumerated, which certifications and information will be embodied in the stipulation of settlement, the Association will be ready to sign the aforesaid stipulation.

Your cooperation in advising me as to the feasibility of our request will be sincerely appreciated, for which we thank you in advance.

Kindest regards.

Very truly yours,

Victor N. Pacor

VNP/bg

cc: Frederick M. Tobin
Jules Lang
Westchester Federal Savings & Loan Assn.

RESPONDING AFFIDAVIT OF WILLIAM M. IVLER
FOR MOVING PLAINTIFF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARTFORD NATIONAL BANK AND
TRUST COMPANY,

Plaintiff,

-against-

WESTCHESTER FEDERAL SAVINGS &
LOAN ASSOCIATION,

Defendant.

RESPONDING AFFIDAVIT OF
MOVING PLAINTIFF

Civil Action No.

74 Civ. 3900 (K.T.D.)

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD)ss.:

WILLIAM M. IVLER, being duly sworn, deposes and says, that:

1. He is the attorney for the plaintiff and makes this affidavit in support of plaintiff's motion for summary judgment and in response to defendant's answering affidavit submitted herein.

2. In paragraph 6 of the answering affidavit of Raymond W. Kerr, the affiant stated that "plaintiff acknowledged that a question existed concerning the savings account 'consisting of security rents under leases'"referring therein to a proposed stipulation of settlement of this action which never materialized. Said stipulation was never signed, was never a "concession" that any of these pledged monies were restricted in any way, but was an attempt to dispose of the matter. (See my letter of May 7, 1975 attached hereto.)

3. In paragraph 7 of Kerr's affidavit, the affiant falsely states that "Plaintiff never responded to the letter (defendant's attorney's letter of May 12, 1975 to plaintiff's attorney) nor made any comment to the conditions therein contained." Attached hereto is a copy of your deponent's letter of May 23, 1975 wherein said "conditions" were rejected as being "not acceptable."

In addition to said letter, your deponent telephoned Mr. Pacor, defendant's attorney and stated that the conditions set forth in his letter were so far from any solution of the dispute as to be farcical.

4. An examination of the answering affidavit clearly indicates that there is no dispute that the savings account in question was properly pledged to plaintiff, that defendant had knowledge of the pledge and acknowledged the pledge and that at no time prior to plaintiff advancing monies to the borrower did defendant ever notify plaintiff that said savings account was restricted in any way. Furthermore, it must be noted that defendant failed to perform the minimum act of placing on the savings account passbook any notice that the account's transferability was restricted in any way. The question must be asked that if defendant felt that this account was "fiduciary funds", why did they accept the pledge and transfer of the savings account to plaintiff? and why did defendant wait until demand was made some time later to, for the first time, attempt to restrict the transfer of the account?

Sworn to before me this
13th day of November, 1975

S/ William M. Ivler
William M. Ivler

S/ PAUL L. BREIDBORD

May 7, 1975

Victor Pacor, Esq.
Pacor & Del Vecchio
56 Harrison Street
New Rochelle, New York 10801

Re: Hartford National Bank and Trust
Company vs. Westchester Federal Savings
& Loan Association

Dear Vic:

Without prejudice I am enclosing herewith the proposed stipulation.

Please advise me as soon as possible whether this settlement will be consummated.

Sincerely,

WMI:SG
enclosure

May 23, 1975

Victor N. Pacor, Esq.
Pacor & Del Vecchio
56 Harrison Street
New Rochelle, New York 10801

Re: Hartford National Bank vs.
Westchester Federal Savings

Dear Vic:

Your conditions set forth in your letter of May 12, 1975 are not acceptable to my client.

I shall proceed with my motion and forward same to you within the next week to ten days.

Sincerely,

WMI:SG

REPLY AFFIDAVIT OF VICTOR N. PACOR
FOR DEFENDANT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARTFORD NATIONAL BANK AND TRUST
COMPANY,

Plaintiff,

-against-

WESTCHESTER FEDERAL SAVINGS & LOAN
ASSOCIATION,

Defendant.

REPLY AFFIDAVIT OF
DEFENDANT

Civil Action No.

74 Civ. 3900 (K.T.D.)

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

VICTOR N. PACOR, being duly sworn, deposes and says, that:

1. He is the attorney for the Defendant, Westchester Federal Savings & Loan Association, and makes this affidavit in opposition to Plaintiff's Motion, and in reply to Responding Affidavit made by the attorney for the Plaintiff.

2. Defendants never contended that the stipulation of settlement was signed. The proposed stipulation was affixed to Defendant's answer as an exhibit, for the purpose of showing the court that triable issues existed which could not be resolved by summary judgment.

3. The letter to which Plaintiff's attorney directs the court's attention in support of his accusation that Mr. Kerr made a false statement, must have inadvertently been misfiled. Until this time, though a inspection of all files concerning this matter, have meticulously been examined, it has not been found. However, affiant wishes to point out to the court, that this is not critical to the issues involved.

4. It is respectfully submitted that Plaintiff in Paragraph 4 of the Responding Affidavit, attempts to cloud the question of acknowledgment. Plaintiff states that Defendant acknowledged the pledge. This is not true, (emphasis added). The court's attention is directed to Exhibit B in Plaintiff's moving papers "receipt of notice". The acknowledgment by the Defendant was on the "receipt of notice" papers prepared by the Plaintiff and forwarded by it to the Defendant. Said notice reads "Westchester Federal Savings & Loan Association acknowledges that a copy of the above order for transfer has been filed with it". This is not an acknowledgment of the pledge, (emphasis added). It is an acknowledgment of the receipt of a copy of the pledge for whatever the pledge is worth.

5. Affiant also respectfully calls the court's attention to third sentence of Paragraph 4 on page 2 of Plaintiff's moving papers, in the Affidavit of William C. Stevens, which reads "said pledge directs Defendant to transfer said account to Plaintiff, and said notice advises Defendant of the pledge, and the delivery to Plaintiff of the passbook".

It is respectfully submitted that no where on Plaintiff's forms forwarded to Defendant, is there a direction to the Defendant to transfer said account to the Plaintiff. An examination of Plaintiff's Exhibit A in the moving papers supports this position.

The only request that is made of the Defendant is that it sign and return a copy of the enclosed "receipt of notice".

6. In answer to the question posed by the affiant in the Responding Affidavit, Paragraph 4, it is respectfully submitted that the Defendant never, (emphasis added), accepted the pledge and transfer of the savings account to the Plaintiff, and in fact in returning the "receipt of notice" a letter was transmitted therewith to William C. Stevens,

(Exhibit C of Defendant's answer) wherein the Defendant defined the savings account as "consisting of security rents under leases".

7. Defendant was under no legal or other obligation to advise Plaintiff of any conditions. However, Plaintiff had an obligation, if it were acting prudently, to at least investigate the statement of the Defendant that "I am returning herewith the receipt of the notice of pledge of the above savings account consisting of security rents under leases", before it made any loan, or accepted any pledge.

/s/
Victor N. Pacor

Sworn to before me this
14th day of November, 1975.

/s/
Amella T. Del Vecchio
Notary Public, State of New York
No. 03-5976175 Qual. in Bronx Co.
Commission Expires March 20, 1976

TRANSCRIPT

1 rdsr

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 HARTFORD NATIONAL BANK AND :
6 TRUST COMPANY, :

7 Plaintiff, :

8 - v s - :

9 WESTCHESTER FEDERAL SAVINGS & :
10 LOAN ASSOCIATION, :

11 Defendant. :

12 -----X

13 B e f o r e :

14 HON. KEVIN THOMAS DUFFY,

15 District Judge.

16 New York, New York
17 January 19, 1976, 3:00 p.m.

18 A p p e a r a n c e s :

19 WILLIAM. IVLER, ESQ.,
20 Attorney for the Plaintiff.

21 PACOR & DELVECCHIO, ESQS.,
22 Attorneys for the Defendant;
23 By: VICTOR PACOR, ESQ.
24
25

1 rdsr

2 [In open court:]

3 THE COURT: Call your first witness.

4 W I L L I A M C . S T E V E N S , called as
5 a witness on behalf of the plaintiff, after having
6 been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. IVLER:

9 THE COURT: By whom are you employed?

10 THE WITNESS: I am not employed. I am working
11 for myself.

12 THE COURT: At one time you were with the
13 Hartford National Bank?

14 THE WITNESS: That is correct.

15 THE COURT: Go on from there.

16 Q Mr. Stevens, were you employed by the Hartford
17 National Bank in April 1971?

18 A I was.

19 Q What capacity?

20 A Assistant Vice President.

21 Q And in that capacity did you have any dealings
22 with an entity known as Hyde Park Company?

23 A I did.

24 Q Did you know who the principal or one of the
25 principals of the Hyde Park Company was?

1 rdsr

Stevens - direct

2 A Mr. Herbert Stoll, S-t-o-l-l.

3 Q Did there come a time in April of 1971 that you
4 had a transaction on behalf of the bank with Hyde Park
5 Company?

6 A Late April or early May, I have forgotten the
7 exact closing date.

8 Q Could you tell the Court what the nature of this
9 transaction or what dealings you had with Hyde Park at that
10 time were?

11 A Mr. Stoll in the name of Hyde Park Company
12 requested a loan of \$35,000 to be secured by a savings
13 passbook on Westchester Federal Savings & Loan Association.

14 Q And did he exhibit his passbook to you?

15 A He did.

16 Q And what did you do after that request of Mr.
17 Stoll?

18 A I called First Federal to determine the assign-
19 ability --

20 Q You called who?

21 A I am sorry, Westchester Federal, to determine
22 the assignability and was told by the officer or account
23 executive at Westchester to send our assignment form over
24 to him, which I did.

25 MR. IVLER: May I have this marked for

1 rdsr Stevens - direct

2 identification?

3 [Plaintiff's Exhibit 1 is marked for
4 identification.]

5 THE COURT: Mark it in evidence if there is no
6 objection.

7 [Plaintiff's Exhibit 1 is received in
8 evidence.]

9 Q Mr. Stevens, I show you Plaintiff's Exhibit 1
10 and ask you what that is.

11 A That was my letter to Mr. Cruz at Westchester
12 Federal, under cover of which I sent him the assignment
13 of the passbook and requesting him to complete the receipt
14 of notice and return it to me.

15 MR. IVLER: May I have this marked as
16 Plaintiff's Exhibit 2 for identification?

17 [Plaintiff's Exhibit 2 is marked for
18 identification.]

19 Q Mr. Stevens, I show you Plaintiff's Exhibit 2
20 for identification and ask you if you can identify that
21 document.

22 A That is Hartford National's standard form on
23 assignment of savings account passbooks.

24 Q Specifically, Plaintiff's Exhibit 2 for identi-
25 fication, what is that form? When was that used?

1 rdsr

Stevens - direct

2 A For what is it used?

3 Q No, when was that specific document --

4 A This was used to our advancing money against the
5 assignment of the passbook.

6 Q Is this the document you referred to which
7 accompanied Plaintiff's Exhibit 1?

8 A Yes.

9 Q And at the time that you sent that to the
10 defendant, did you send the original of the top portion
11 thereof?

12 A Yes.

13 Q And did you subsequently receive back Plaintiff's
14 Exhibit 2 for identification?

15 A Yes.

16 Q And was that accompanied or did that come with
17 any letter or did it come by itself?

18 A I believe there was a letter with it.

19 MR. IVLER: May I have this marked for identi-
20 fication?

21 *** [Plaintiff's Exhibit 3 is marked for
22 identification.]

23 MR. IVLER: I will offer both, your Honor, in
24 a moment.

25 Q I show you Plaintiff's Exhibit 3 for identifica-

1 rdsr

Stevens - direct

2 tion. Is that the letter that accompanied the Plaintiff's
3 Exhibit 2 for identification which you stated you received?

4 A Yes, it is.

5 MR. IVLER: May I offer Plaintiff's 2 and 3 in
6 evidence?

7 [Pause.]

8 MR. PACOR: This bottom one here, what does that
9 pertain to?

10 MR. IVLER: At this time, your Honor, I will not
11 offer the bottom portion until there is testimony as to
12 that.

13 THE COURT: Bottom portion of what?

14 MR. IVLER: Of Exhibit 2 for identification.

15 MR. PACOR: There are three items or four on
16 that exhibit, and the last item is not being submitted.

17 MR. IVLER: I will do that in a moment.

18 THE COURT: All right.

19 MR. PACOR: No objection.

20 THE COURT: Mark both in evidence.

21 [Plaintiff's Exhibits 2 and 3 are received
22 in evidence.]

23 MR. IVLER: May I have these marked as Plain-
24 tiff's Exhibits 4 and 5 for identification?

25 [Plaintiff's Exhibits 4 and 5 are marked

1 rdsr Stevens - direct 7

2 for identification.

3 MR. PACOR: What was No. 4?

4 MR. IVLER: 4 is not in yet.

5 Q I show you Exhibits 4 and 5 for identification
6 and ask you if you can identify the same.

7 A No. 4 is the passbook that I took as collateral
8 and 5 is a withdrawal order to withdraw from the account.

9 Q When was that done by you? Was that prior
10 to making your loan or after or what was the sequence
11 of that?

12 A Prior to making the loan.

13 Q I see. Did you have that passbook in your
14 possession when you communicated with the defendant the first
15 time?

16 A We did.

17 MR. IVLER: I offer Plaintiff's Exhibits 4 and
18 5.

19 MR. PACOR: No objection.

20 [Plaintiff's Exhibits 4 and 5 are received
21 in evidence.]

22 Q Mr. STEvens, I show you Plaintiff's Exhibit 2
23 and ask you if you can explain the bottom portion, the last
24 portion appearing thereon which bears the title, "Release."
25 I call your attention to it. You will notice it is filled

1 rdsr Stevens - direct

2 in. Did you fill that in?

3 A I filled that in.

4 Q When did you do that?

5 A The day I went over to Westchester Federal
6 to claim the funds in the account.

7 Q When was that?

8 A Well, it is dated here Jyly 18, 1974.

9 Q Is that the date?

10 A Yes.

11 Q Tell us what happened on that date.

12 A I went over, went into the bank, spoke to a
13 platform officer whose name I don't remember, was asked
14 to wait a few minutes and about a half hour later I was
15 asked to come up to Mr. Phelan's office, whereupon
16 Westchester Federal refused to release the funds.

17 Q Did you at that time present the Exhibits 4 and
18 5, the passbook and the withdrawal slip?

19 A I did.

20 Q And the release, Plaintiff's Exhibit 2?

21 A Yes.

22 Q And you offered that?

23 A Yes.

24 MR. IVLER: I have no further questions.
25

1 rdsr

Stevens - cross.

2 CROSS-EXAMINATION

3 BY MR. PACOR:

4 Q Mr. Stevens, what was the date of your loan to
5 Mr. Stoll or to Hyde Park?

6 A I believe it was in May.

7 Q Sometime in May?

8 A 1971, yes.

9 Q Did you testify that you gave that slip, that
10 withdrawal slip, prior to making the loan? Did I hear
11 your testimony correctly?

12 A We take a withdrawal slip at the time the
13 passbook is taken. I should put that in the present tense.
14 I did when I was with the bank. I had the passbook and the
15 withdrawal slip.

16 Q They were both pledged, is that correct, sir?

17 A Well, the passbook was pledged. The withdrawal
18 slip allows us --

19 Q Were you going to use it that same day, the
20 withdrawal slip?

21 A No.

22 Q It was pledged as additional security, is that
23 correct?

24 A Yes.

25 Q When did you actually use that withdrawal slip

1 rdsr Stevens - cross

2 for the first time?

3 A July 18, 1974.

4 Q What is the date on that withdrawal slip? This
5 is Plaintiff's Exhibit 4.

6 THE COURT: Plaintiff's Exhibit 5.

7 A July 18, 1974.

8 Q So that when that withdrawal slip was given you,
9 it was undated; is that correct?

10 A That was the policy, yes. .

11 Q Excuse me?

12 A That was the policy of the bank.

13 THE COURT: Do you remember specifically this
14 withdrawal slip, whether it was dated?

15 THE WITNESS: I am confused by your question.

16 THE COURT: You got this withdrawal slip from a
17 man by the name of Stoll; right?

18 THE WITNESS: That is correct.

19 THE COURT: At the time he gave it to you you did
20 it have a date on it? Or was it just signed?

21 THE WITNESS: I don't remember.

22 THE COURT: All right.

23 MR. PACOR: I didn't hear the answer, your
24 Honor.

25 THE COURT: "I don't remember."

1 rdsr

Stevens - cross

11

2 THE WITNESS: Assuming we took that specific
3 withdrawal slip at the time we made the loan, it would not
4 have been dated because we would date it at the time we
5 made the withdrawal. This was the policy of the bank at the
6 time, and still is as far as I know.

7 Q How about the other writing on this withdrawal
8 slip other than the signature of Mr. Stoll, was that all
9 there at the time that you got it from Mr. Stoll?

10 A At the time we got it from Mr. Stoll?

11 Q Yes.

12 A Assuming we took it at the time we made the
13 loan, no, because this shows a different amount of dollars
14 in the passbook than there were dollars when we took the
15 passbook.

16 O In other words, you had in your possession in
17 May of 1971 a blank withdrawal slip except for a signature;
18 is that correct?

19 A That would be correct, yes.

20 Q Now, you said that you had communicated, you had
21 written to a Mr. Cruz at the Westchester Federal Savings
22 & Loan.

23 A Yes.

24 Q Do you know who he is?

25 A No, I don't. I had spoken to him on the phone

1 rdsr

Stevens - cross

2 when I was trying to determine the assignability of the
3 account and of Mr. Stolls' ability --

4 Q You spoke to him on the phone?

5 A And wrote him a letter.

6 Q Who did you ask for?

7 A Just an account officer at the bank.

8 Q Do you know if he had a title?

9 A I believe it is on his letter.

10 Q Which letter is that, sir?

11 THE COURT: Here it is, Exhibit 3.

12 A That is the letter from Mr. Phelan, Exhibit 3.

13 Q There is no title there. You don't know whether
14 he was an officer of the bank?

15 A I don't know.

16 Q You don't know?

17 A I do not know.

18 MR. PACOR: May I see Plaintiff's Exhibit 3,
19 your Honor? That is the letter from Mr. Phelan.

20 THE COURT: There you are [handing.]

21 Q Mr. Stevens, I ask you to look at that letter
22 and would you tell us what you understood the words
23 "consisting of security rents under leases" to mean?

24 A The type of deposit that it was.

25 Q Excuse me, sir?

1 rdsr

Stevens - cross

2 A The type of deposit that it was. He said, "The
3 above savings account consists or consisting of security
4 rents under the lease."

5 Q Did that give you any idea as to what this ac-
6 count consisted of?

7 A It was assignable, that is all I was concerned
8 about.

9 Q Would you answer the question? Did that state-
10 ment, that it is rent security deposit, did that flash
11 a lithgt to you or anything?

12 A No.

13 Q It did not?

14 A No. Rent accounts under the present -- under
15 the then Connecticut law were assignable. It did not flash
16 any lights to me at all. I assumed by my telephone con-
17 versation and this letter from Mr. Phelan they had accepted
18 the assignement and there were no conditions.

19 Q Accepted the assignment?

20 A Yes.

21 Q What do you mean by accepted the assignment?

22 A If I sent somebody a notification of assignment
23 and they send it back, I assume they recognize the
24 assignment.

25 Q May I read, not wanting to take the Court's time,

1 rdsr

Stevens - cross

2 but I would like to read to you, Mr. Stevens, Plaintiff's
3 Exhibit 2 and it says, "A notice of pledge." Is that
4 what you relied upon, that they accepted the assignment?

5 A It is.

6 Q You relied -- which one of the notices did you
7 accept?

8 A Where it says, "Receipt of notice," signed by
9 an officer of Westchester Federal Savings & Loan Asso-
10 ciation.

11 Q It says, "Receipt of notice, Westchester Federal
12 Savings & Loan Association acknowledges that a copy of the
13 agove order for transfer has been filed with it. The
14 copy of signatures as shown above appear to compare cor-
15 rectly with the signatures on file with us. The present
16 balance in said account is \$38,265."

17 Is there anything in here that connotes their
18 having accepted an assignment?

19 A I feel there was.

20 Q You feel there was?

21 A I feel there was. I think it would certainly be
22 an obligation of Westchester, that if there were any ques-
23 tion of the assignment of that account, that they would have
24 corresponded with me.

25 MR. PACOR: I move to strike that, your Honor.

1 rdsr

Stevens - cross

15

2 THE COURT: It is a conclusion of law. I will
3 make those decisions. Go ahead.

4 MR. PACOR: Thank you.

5 Q Mr. Stevens, you read the letter from Mr. Phelan?

6 A Yes. There is nothing in there that--it is not
7 assignable or they don't accept the assignment.

8 Q It does explain or denote the type of account
9 that it was?

10 A That is right.

11 MR. IVLER: Objection, your Honor.

12 THE COURT: I will read the letter.

13 MR. IVLER: It speaks for itself.

14 THE COURT: Yes.

15 Q Did you inquire, after you received that letter,
16 did you inquire of Mr. Stoll as to what this account --

17 A Afterwards, no, I did not.

18 Q At the time you received the letter from Mr.
19 Phelan?

20 A Afterwards did I inquire of Mr. Stoll? No.

21 Q You did not?

22 A As far as I was concerned the transaction was
23 completed at that point, when I got these two exhibits
24 back from Westchester Federal.

25 Q Was the letter forwarded to you with the two

1 rdsr Stevens - cross

2 exhibits simultaneously?

3 A Exhibit 3 and Exhibit 2 came together.

4 Q They came together?

5 A Yes.

6 Q So that you read them together; is that correct?

7 A It refers in Mr. Phelan's letter that he is
8 returning herewith this notice of title.

9 Q You never inquired of Mr. Stoll as to why this
10 account was called a rent security account?

11 A I had no reason to. The assignment was valid as
12 far as I know.

13 Q Answer the question.

14 THE COURT: He said he did not talk to him.

15 THE WITNESS: I had no reason to.

16 MR. PACOR: I have no further questions, your Honor.

17 THE COURT: Mr. Ivler?

18 ***
REDIRECT EXAMINATION

19 BY MR. IVLER:

20 Q Mr. Stevens, if you had been told in April or
21 May of 1971 by the defendant or anybody on behalf of the
22 defendant that this account was not assignable, would you
23 have made the loan?

24 A Absolutely not.

25 MR. IVLER: No further questions.

rdsr

Stevens

17

1 THE COURT: All right. Maybe, counsel, you can
2 tell me easier than this witness can, where is the real pro-
3 perty which is run by Stoll's company -- what is the name of
4 the company?
5

6 MR. IVLER: Hyde Park. At the time of all the
7 testimony it was the Hyde Park Company which owned this
8 apartment in Stanford, Connecticut.

9 THE COURT: All right. How much was your loan
10 for?

11 THE WITNESS: \$35,000.

12 THE COURT: Did you hear that?

13 MR. PACOR: Yes, I did.

14 THE COURT: The loan was for \$35,000.

15 Was there a note also signed at the time?

16 THE WITNESS: Yes, sir.

17 THE COURT: There was such a note?

18 THE WITNESS: Oh, yes.

19 THE COURT: How was the note signed?

20 THE WITNESS: By Hyde Park Company, by Herbert
21 Stoll.

22 THE COURT: Has that loan ever gone into default?

23 THE WITNESS: Yes, sir. Interest has not been
24 paid, hadn't been paid for some time when we wanted payment.

25 THE COURT: Interest was not paid. That is when

they went to Westchester to get the payment; is that right?

THE WITNESS: That's right. The loan was never increased or decreased.

THE COURT: Do you have any idea as to what the proceeds of the loan were used for?

THE WITNESS: No, I do not now. I feel sure I did at the time but I don't remember now.

THE COURT: Do you have the application for the loan and the note here?

THE WITNESS: We did not use -- I don't know whether Mr. Ivler has a copy of the note now. We did not then on secured loans taking an application.

THE COURT: Thank you. Step down.

[Witness excused.]

MR. IVLER: Plaintiff rests, your Honor.

THE COURT: You move to conform the pleadings to the proof; is that right?

MR. IVLER: Yes, sir.

THE COURT: Motion is granted.

Mr. Pacor, you may proceed.

You have just made all the motions that are generally made at the end of the plaintiff's case. They were absolutely brilliant.

MR. PACOR: I moved to dismiss. I made them all.

1 rdsr

Hahn - direct

2 I call Mr. Harold Hahn.

3 H A R O L D C . H A H N , J R . , called
4 as a witness on behalf of the defendant, after being
5 duly sworn, testified as follows:

6 ***
DIRECT EXAMINATION

7 BY MR. PACOR:

8 Q Mr. Hahn, are you an officer of the defendant
9 Westchester Federal Savings & Loan Association?

10 A I am.

11 Q What office do you hold, sir?

12 A Pardon?

13 Q What office do you hold?

14 A Assistant vice president.

15 Q Mr. Hahn, are you familiar with the account
16 of Hyde Park Company, care of Herbert Stoll?

17 A Just the account signature card itself.

18 Q You are familiar with the records?

19 A Yes.

20 Q And do you keep records in the regular course
21 of business in your institution?

22 A We do.

23 Q I show you, Mr. Hahn, a card and ask you what
24 that card is.

25 A That is a fiduciary account, signature card,

1 rdsr Hahn - direct

2 Hyde Park Company.

3 Q Would you tell the Court whose signature is at the
4 bottom of that card, sir?

5 A Herbert Stoll.

6 THE COURT: If you know.

7 Q If you know.

8 A Well, reading it, the name, Herbert Stoll.

9 THE COURT: That is a different beast.

10 MR. IVLER: I would like a voir dire if you are
11 offering it.

12 MR. PACOR: I will offer it, yes.

13 [Defendant's Exhibit A is marked for
14 identification.]

15 MR. IVLER: I would like a voir dire, your
16 Honor.

17 THE COURT: Yes. You will get your voir dire
18 but in just a moment.

19 You have a card that goes with this beast?

20 MR. PACOR: There is another card I want to
21 introduce, your Honor.

22 THE COURT: Mark it Defendant's Exhibit b.

23 [Defendant's Exhibit B is marked for
24 identification.]

25 THE COURT: All right, showing you Defendant's

1 rdsr Hahn - direct

2 exhibit, proceed.

3 Q I show you a card, Mr. Hahn, and ask you to
4 please identify it and tell us what it is.

5 A This is a savings account ledger card which was
6 used before we converted to computer, showing the history
7 of the account.

8 Q Shows what?

9 A History of the account.

10 Q Does it show the balance in the account?

11 A The balance in the account, that's correct.

12 Q At that particular time?

13 A Yes.

14 Q You say you have converted to computers?

15 A Yes.

16 Q What is the present balance of the account, Mr.
17 Hahn?

18 A Present balance as of the credit of interest
19 December 1, '75, I believe was \$37,619.90.

20 Q And that is from your bank records; is that
21 correct?

22 A That is correct, sir.

23 THE COURT: Do you want a voir dire?

24 MR. IVLER: Yes, your Honor.
25

1 rdsr Hahn - direct

2 VOIR DIRE EXAMINATION

3 BY MR. IVLER:

4 Q Mr. Hahn, what was your position or were you
5 employed by the defendant corporation in April and May of
6 1971?

7 A I was.

8 Q What was your position at that time?

9 A I was manager of our Yonkers office.

10 Q Now, are you personally familiar with Plaintiff's
11 Exhibit A -- Defendant's Exhibits A and B for identification?

12 A Just the fact that it is a signature card and a
13 ledger card, yes.

14 Q Did you have anything to do in the course of
15 your employment in April 1971 with the keeping of these
16 cards?

17 A I did not.

18 Q Did you have anything to do in 1971 or any time
19 thereafter with the keeping of these cards?

20 A Well, when I came back to the main office -- not
21 those particular cards. It is a permanent part of the
22 file, of course.

23 Q Were you in charge or did you have any respon-
24 sibility for the entries made on these cards at the time
25 they were made?

1 rdsr

Hahn - direct

2 A No.

3 Q Are you familiar with where these cards were and how
4 they were handled at the time they were made until the time
5 you first saw them?

6 A Insofar as where the files are located, yes.

7 Q That is all?

8 A Yes.

9 Q Do you know who made any of the entries appearing
10 thereon in the typewritten red?

11 A No, I do not.

12 Q Are you familiar with the fact that any pro-
13 cedures whereby typing was made on these cards?

14 A No, not to the best of my knowledge.

15 MR. IVLER: At this time I object to this
16 witness introducing these in evidence because he has no
17 familiarity with these cards or how the entries were made
18 or the procedures thereof. I object.

19 MR. PACOR: They are made in the regular course
20 of business.

21 THE COURT: You have to get it out through him.
22 You want me to do it for you?

23 The cards that you have seen, are they presently
24 under your care and custody?

25 THE WITNESS: They are.

rdsr

Hahn - direct

24

1 THE COURT: Were the entries made on those cards
2 made at or about the time reflected on those cards?
3

4 THE WITNESS: The only entries, as far as I can
5 see from the ledger card, would be interest, which is a
6 normal semi-annual credit.

7 THE COURT: It is done at or about the time
8 reflected?

9 THE WITNESS: Yes, June and December.

10 MR. IVLER: If your Honor please, I have the
11 advantage that you don't have, that I have them in front
12 of me and there are other entries thereon.

13 MR. PACOR: Let's identify the cards you are
14 reading from.

15 MR. IVLER: There are other entries appearing on
16 both cards other than the interest and the deposit informa-
17 tion as this witness has testified. It is for that reason
18 that I am objecting to them.

19 THE COURT: Let me see them.

20 MR. IVLER: All right, your Honor.

21 [Hanging.]

22 THE COURT: If the jury can be told to strike
23 evidence, I can assure you I can do the same thing.

24 [Pause.]

25 THE COURT: I will take them in evidence. I

1 rdsr

Hahn - direct

2 don't know if you know, but it cuts both ways. The thing
3 that you are bothered by is the statement, "No withdrawals
4 permitted without counter-signature of mortgage indemnity".
5 Is that correct?

6 MR. IVLER: That is one. If you take a look at
7 Plaintiff's Exhibit 4, the passbook they have issued has
8 no reference on it whatsoever and that is the reason I
9 objected, your Honor.

10 THE COURT: I will take it in evidence.

11 MR. IVLER: May I have an exception?

12 THE COURT: Surely.

13 MR. PACOR: I have no further questions, your
14 Honor.

15 THE COURT: Having finished voir dire, you can
16 start cross-examination.

17 MR. IVLER: I didn't have a chance to sit down.

18 [Defendant's Exhibits A and B are received
19 in evidence.]

20 CROSS-EXAMINATION

21 BY MR. IVLER:

22 Q Mr. Hahn, in 1971 you stated that you were
23 employed by the bank; is that right?

24 A That is correct.

25 Q Now, I show you Plaintiff's Exhibit B --

rdsr

Hahn - cross

26

1 Defendant's Exhibit B and call your attention to the
2 legend appearing on the top thereof in red which says,
3 "Rent or security account." I show you Plaintiff's Exhibit
4 4 and ask you whether you see any reference on Plaintiff's
5 Exhibit 4, the passbook, to any designation of that
6 account in any way whatsoever.
7

8 A I do not.

9 Q Isn't it the normal practice of Westchester
10 Federal to put on the passbook any limitation of an account
11 as to its designation as it appears on the records in the
12 bank?

13 A Well, the account would be in the name of the
14 Hyde Park Company, which is normally the full title of the
15 account in the passbook.

16 THE COURT: What he is asking is, if it is
17 a rent security account don't you put Hyde Park Company,
18 rent security account, care of Herbert Stoll?

19 THE WITNESS: I would.

20 THE COURT: But this passbook doesn't have it,
21 right?

22 THE WITNESS: It does not.

23 THE COURT: Does the passbook in this place
24 show that another signature is required before a withdrawal
25 can be made?

rdsr

Hahn - cross

1 THE WITNESS: No, it does not. Just on the
2 signature card.

3 Q Mr. Hahn, did you know a Mr. Albert Cruz?

4 A I did.

5 Q What was his position with the defendant on April
6 29, 1971?

7 A I don't recall what his position was at that
8 particular moment in time. I know he was main office manage
9 but whether he had a title at that time or not, I don't
10 recall.

11 Q If a call from another bank came into the defen-
12 dant bank, the main office, concerning whether an account wa
13 assignable or pledgable or not, would that ca-l possibly go
14 to Mr. Cruz?

15 A It could.

16 MR. IVLER: I have no further questions --
17 just one more.

18 Q Could you tell me what was the amount on deposit
19 in the account that we have referred to on July 18, 1974?

20 A July '74?

21 Q July 18, 1974.

22 A \$44,219,84.

23 MR. IVLER: I have no further questions.

24 MR. PACOR: No further questions.
25

1 rdsr

2 THE COURT: Step down.

3 [Witness excused.]

4 MR. PACOR: May I sum up?

5 THE COURT: Yes. Just hold on a moment. We are
6 not sure we are finished.

7 Do you have any rebuttal witness?

8 MR. IVLER: No, I don't, your Honor.

9 MR. PACOR: I just presumed, your Honor. I am
10 sorry.

11 May I sum up now, your Honor?

12 THE COURT: Yes.

13 MR. PACOR: The position of the defendant here
14 is a very academic one. We are holding the money in the
15 account for the benefit of someone. When the account was
16 originally opened, it was opened under the name of the
17 Hyde Park rent security account. Whatever the decision of
18 the Court is here, we are stake holders in substance and
19 we are only concerned as to the effect that it might have --
20 your decision might have on the future as far as any
21 demands by any parties of the bank that they would want
22 the money other than the person who is making claim to
23 it today.

24 Now, if in your decision your Honor sets forth
25 the fact that we are released of any obligation to other

1 rdsr

2 parties and if the money that is turned over to the plain-
3 tiff or whoever else it may be turned over to, is couched
4 with the language that subject to any claims that may be
5 made by tenants for rent security, we will turn it over
6 immediately. Of course, we will comply with the order,
7 but I request that be made part of your decision. That is
8 the only purpose for our being here this morning. We were
9 put on notice when this was originally opened that this
10 was a rent security account.

11 THE COURT: I understand your position. Don't
12 worry about it.

13 MR. PACOR: I have nothing else to say, your
14 Honor.

15 MR. IVLER: I hope I will be as equally as
16 brief. Mr. Pacor and the defendant certainly had an
17 opportunity to bring in any interested parties if they
18 wanted to. They apparently have not. This defense they have
19 in their answer, which there has been no proof on, is ap-
20 parently -- I don't know its efficacy either legally .
21 The testimony here, of course, is very simple.

22 I had the plaintiff, made a loan, secured it
23 with collateral, they checked with the defendant bank if
24 the collateral they were taking was collectable collateral,
25 if it could be assigned. They were informed orally and in

1 rdsr

2 writing that it could. An examination of the documents which
3 are Plaintiff's Exhibit 1 shows that the language in the
4 notice of pledges your passbook number, so and so, said
5 passbook having been delivered to the undersigned with
6 an order for the transfer of such deposit, et cetera.
7 No question Westchester Federal had full knowledge when they
8 were receiving this, this was going to be collateral for
9 a loan, that there were no conditions and no exceptions
10

11 What they did within their own borders could
12 never bind this plaintiff. They did everything possible
13 to ascertain whether they were getting good collateral.
14 They relied upon the representations made. The letter of
15 May 21st that has been introduced by the plaintiff,
16 Plaintiff's Exhibit 3, does not indicate that though it is
17 rent security, using that title very loosely, that it is
18 in any way limited in its pledgability or assignability.
19 If this were the purpose of the defense, what was
20 stated by Mr. Pacor, I think we could have saved the Court
21 and ourselves a lot of time. They have had the use of this
22 money for a year and a half, and if your Honor please, I
23 believe that judgment should be entered for the plaintiff
24 for the full amount as of July 18, 1974, together with
25 interest and costs.

1 rdsr

2 THE COURT: All right. You fellows give me a
3 nice simple factual case. It has a peculiar legal problem.
4 I go back to my days when I was practicing real estate law.

5 I will reserve on it. Besides other things,
6 that way you will get a written decision.

7 MR. IVLER: I have attempted to write a memoran-
8 dum of law but it is negative in the way that there is no
9 law on it.

10 THE COURT: It is a pleasure to have nice people
11 coming into court. Thank you.

12 - - -

OPINION AND ORDER

72-a ✓

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FILED
CLERK OF COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARTFORD NATIONAL BANK AND
TRUST COMPANY,

Plaintiff,

-against-

WESTCHESTER FEDERAL SAVINGS &
LOAN ASSOCIATION,

Defendant.

OPINION AND ORDER

74 Civ. 3900

45259

APPEARANCES:

WILLIAM M. IVLER, ESQ.
Stamford, Connecticut
Attorney for Plaintiff

VICTOR N. PACOR, ESQ.
Pacor & Del Vecchio, Esqs.
New Rochelle, New York
Attorney for Defendant

KEVIN THOMAS DUFFY, D.J.

This is a diversity action between Hartford National Bank and Trust Co. and Westchester Federal Savings & Loan Association over a sum on deposit at the Westchester Bank which was allegedly pledged to the Hartford Bank by a depositor. A trial has been held and this opinion constitutes my findings of fact and conclusions of law.

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MICROFILM

OCT 19 1976

2.

Herbert Stoll, the general partner in a limited partnership known as Hyde Park Company which owned an apartment building in Stamford, Connecticut, approached the Hartford Bank seeking a \$35,000 loan. William C. Stevens, a vice-president of Hartford, asked Stoll about possible security for the loan. Stoll indicated that he had an account at the Westchester Bank and exhibited a passbook with the name "Hyde Park Company C/O Herbert Stoll." The bank agreed to lend Stoll the money and required delivery of the passbook, an undated withdrawal slip for the balance, and an executed pledge.

Thereafter, Stevens wrote to Westchester Federal requesting that it complete a form acknowledging receipt of notice of pledge of the account. Westchester Federal through its counsel, John J. Phelan, returned ^{the}/executed notice of pledge with the following note, "I am returning herewith the receipt of the Notice of Pledge of the above savings account consisting of security rents under leases." Sometime after receipt of the letter, Hartford advanced the money to Stoll. No further inquiries concerning the nature of the account were made by Hartford.

Stoll defaulted on the loan, whereupon Stevens presented the passbook and withdrawal slip to Westchester Federal to obtain receipt of the funds on deposit. Westchester Federal refused to turn over any money from the account.

It is Westchester Federal's position that the funds on deposit are held by Stoll as a fiduciary and that since Hartford National was aware of that fact no valid assignment could occur.

There is no dispute that the monies in issue are in fact fiduciary funds. Westchester Federal has introduced the signature card which is labeled "Fiduciary Account Hyde Park Company (Rent Security Account)." Westchester's ledger card which has also been received in evidence is marked "rent security account." It is equally clear that in advancing money to Stoll, the plaintiff gave value for its security interest in the bank account.

The primary dispute centers upon whether plaintiff had actual knowledge that Stoll held the property in question as trustee for the tenants. It is elementary that one who takes property for value from a fiduciary with actual knowledge that the fiduciary has breached his obligations, participates in the breach and is liable to the beneficiaries. Restatement of Trusts, Second § 288 Ketchum v. Packer, 65 Conn. 544, 33 A.499 (1895).

Here the plaintiff advanced money to Stoll after receiving Phelan's letter indicating that the monies in question were rent security deposits. In so doing, plaintiff participated in Stoll's breach.

Even if it were assumed that plaintiff did not have actual knowledge of the fiduciary character of the money, it still cannot recover in an action against Westchester Federal. Restatement of Trusts, Second § 288 indicates that

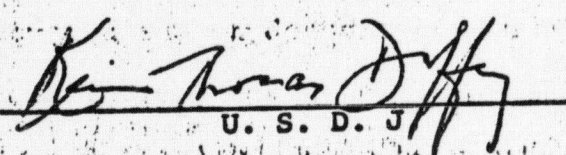
"If the trustee in breach of trust purports to create in a third person an equitable interest in the trust property, the third person cannot enforce such equitable interest if to do so would compel the trustee to complete the breach of trust"

In the case before me plaintiff's interest, if any, in the funds is equitable in nature and falls within this principle of law. Illustration 2 to § 288 is comparable to the situation at hand:

"A is trustee of land. In breach of trust A borrows money from B who has no notice of the trust, and A agrees that the land shall be security for the loan. On the following day B receives notice of the breach of trust. B cannot enforce the equitable mortgage."

I find as a matter of fact and of law that the Hartford National Bank cannot enforce its claim to these rent security deposits.

Settle judgment for defendant on notice.


U. S. D. J.

Dated: New York, New York

, 1976.

OCT 18 1976

NOTICE OF CHANGE OF ADDRESS

UNITED STATES DISTRICT
SOUTHERN DISTRICT OF NEW YORK

HARTFORD NATIONAL BANK AND TRUST
COMPANY

Plaintiff

VS.

WESTCHESTER FEDERAL SAVINGS AND
LOAN ASSOCIATION

Defendant

CIVIL ACTION NO. 74 CIV 3900
(K.T.D.)

NOTICE OF CHANGE OF ADDRESS

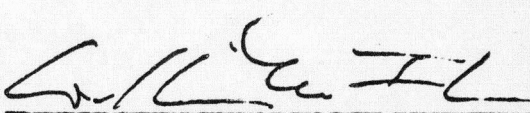
TO THE CLERK OF THE COURT:

Sir:

This is to notify you that my address has been changed
from 375 Park Avenue, New York, New York to 300 Broad Street,
Stamford, Connecticut 06901.

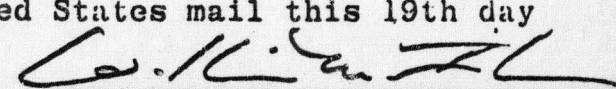
THE PLAINTIFF

BY:


William M. Ivler,
Its Attorney
300 Broad Street
Stamford, Conn. 06901
(203) 324-3111

CERTIFICATION

THIS IS TO CERTIFY that a copy of the foregoing Notice
of Change of Address was mailed to Victor N. Pacor, Esquire of
Pacor and DelVecchio, 56 Harrison Street, New Rochelle, New York
10801, postage prepaid, via United States mail this 19th day
of November, 1976.


William M. Ivler

JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

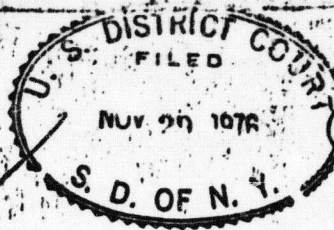
HARTFORD NATIONAL BANK AND
TRUST COMPANY,

Plaintiff,

-against-

WESTCHESTER FEDERAL SAVINGS & LOAN
ASSOCIATION,

Defendant.



JUDGMENT

Civil Action No.: 74 CIV. 3900

This cause having duly come on for trial before the court, District Judge Kevin Thomas Duffy, presiding, and both parties appearing by counsel, and the cause having been submitted to the court on the evidence adduced by the parties for a determination as to the distribution of a sum of money on deposit with the Defendant herein, which amount was allegedly pledged to the Plaintiff herein, by a depositor, and the court having rendered its verdict with Opinion and Order No. 45259 as follows:

"I find as a matter of fact and of law that the Hartford National Bank cannot enforce its claim to these rent security deposits."

Now, it is hereby ordered, adjudged, and decreed, that the Defendant have Judgment against the Plaintiff, dismissing the Plaintiff's complaint, in accordance with the foregoing decision, plus costs and disbursements, *to be taxed*.

New York, N.Y.

Dated this 29th day of November 1976.

Kevin Thomas Duffy
USDJ

JUDGMENT ENTERED -

11/30/76

Raymond F. Bengardt
Clerk

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARTFORD NATIONAL BANK & TRUST
COMPANY

Plaintiff

VS.

WESTCHESTER FEDERAL SAVINGS &
LOAN ASSOCIATION

Defendant

CIVIL ACTION

NO. 74 CIV 3900 (KTD)

NOTICE OF APPEAL

Notice is hereby given that the plaintiff herein appeals to the United States Court of Appeals for the Second Circuit from the judgment entered in the above captioned proceeding on the 29th day of November, 1976.

DATED: Stamford, Connecticut,
the 28 day of December, 1976.

THE PLAINTIFF,

BY:

W. M. Ivler
William M. Ivler, Esq.

Its Attorney

300 Broad Street

Stamford, Connecticut

06901

(203) 324-3111

c/o HILBERG & WEISS

ONE PENN PLAZA

NEW YORK, N.Y.

C E R T I F I C A T I O N

THIS IS TO CERTIFY that a copy of the foregoing Notice of Appeal was mailed to Victor N. Pacor, Esq. of Pacor & DelVecchio, 56 Harrison Street, New Rochelle, New York 10801, postage prepaid, via United States mail, this 28 day of December, 1976.

W. M. Ivler
William M. Ivler

CLERK'S CERTIFICATE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HARTFORD NATIONAL BANK AND TRUST
COMPANY,

Plaintiff

-VS-

WESTCHESTER FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Defendant

CASE NO. 74 CIV 3900

Judge Kevin T. Duffy

CLERK'S CERTIFICATE

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A - B, and the original filed papers numbered 1 thru 13, inclusive, constitute the record on appeal in the above entitled proceeding, except for the following missing documents:

DATE FILED

PROCEEDINGS

- NONE -

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 7th day of January, in the year of our Lord, One thousand nine hundred and seventy-seven, and of the Independence of the United States the 201st year.

WILLIAM M. IVLER
ATTORNEY AT LAW

Raymond F. Burghardt
Clerk of the Court

EXHIBIT 1

HARTFORD NATIONAL BANK AND TRUST COMPANY

80-a

Established 1792
CONNECTICUT

April 29, 1971

C
O
P
Y
Mr. Albert Krus
Westchester Federal Savings & Loan Association
North Avenue and Huguenot Street
New Rochelle, New York 10800

Dear Mr. Krus:

Enclosed is the Notice of Passbook Pledge which we discussed on the phone this morning. I would appreciate your completing the Receipt of Notice and returning the original form to me. I have enclosed a copy for your records.

Thanks for your assistance.

Very truly yours,

HARTFORD NATIONAL BANK & TRUST CO.

William C. Stevens
Assistant Vice President

WCS:pcm

Encl.

EXHIBIT 2

PLEDGE OF SAVINGS ACCOUNT

ORIGINAL

81-a

TO
HARTFORD NATIONAL BANK AND TRUST COMPANY

Atlantic Street OFFICE
Stamford, CONN., 19

TO Westchester Federal Savings & Loan Assoc.
New Rochelle, New York

FOR VALUE RECEIVED, ON SAVINGS ACCOUNT NO. #450,964MO TRANSFER TO
HARTFORD NATIONAL BANK AND TRUST COMPANY, THE BALANCE TO MY CREDIT WITH SUBSEQUENT ACCRUED
DIVIDENDS OR INTEREST THEREON.

THIS ORDER, TOGETHER WITH THE DEPOSIT BOOK NUMBERED AS ABOVE, HAS BEEN DELIVERED TO SAID
HARTFORD NATIONAL BANK AND TRUST COMPANY, AS COLLATERAL SECURITY FOR MY OBLIGATION OR OBLIGA-
TIONS TO SAID BANK.

WITNESS:

Hyde Park Company
Herb Stoll
SIGNATURE OF DEPOSITOR (AS ON BOOK)

B NOTICE OF PLEDGE

Stamford, CONN., 19

TO Westchester Federal Savings & Loan Assoc.
New Rochelle, New York

THERE HAS BEEN PLEDGED TO THE UNDERSIGNED THE SAVINGS DEPOSIT OF
Hyde Park Company C/O Herb Stoll

IN YOUR BANK EVIDENCED BY

YOUR PASS BOOK NO. #450,964MO SAID PASSBOOK HAVING BEEN DELIVERED TO THE UNDERSIGNED WITH
AN ORDER FOR THE TRANSFER OF SUCH DEPOSIT. A COPY OF WHICH ORDER IS HEREWITH FILED WITH YOU.
YOU ARE REQUESTED TO SIGN AND RETURN THE COPY ENCLOSED, WHICH IS HEADED "RECEIPT OF NOTICE."

HARTFORD NATIONAL BANK AND TRUST COMPANY
Atlantic Street OFFICE

BY *[Signature]* Asst. Vice Pres.
(OFFICIAL CAPACITY)

C RECEIPT OF NOTICE

New Rochelle, New York, May 21, 1971
(PLACE)

Westchester Federal Savings and Loan Association ACKNOWLEDGES THAT A COPY OF
THE ABOVE ORDER FOR TRANSFER HAS BEEN FILED WITH IT. THE COPY OF SIGNATURE(S) AS SHOWN ABOVE APPEARS
TO COMPARE CORRECTLY WITH SIGNATURE(S) ON FILE WITH US. THE PRESENT BALANCE IN SAID ACCOUNT IS
\$38,285.00

Westchester Federal Savings and Loan Association

(BANK OF DEPOSIT)

BY *A. M. West - Vice President*
(OFFICIAL CAPACITY)

D RELEASE

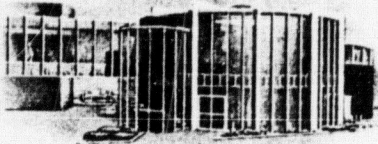
Stamford, CONN., July 18, 1974

RECEIVED OF Westchester Federal Sav. & Loan Assoc. THE AMOUNT

OF \$ AND IN CONSIDERATION THEREOF THE ABOVE ORDER HAS THIS DAY BEEN RELEASED
BY US.

HARTFORD NATIONAL BANK AND TRUST COMPANY
OFFICE

EXHIBIT 3



WESTCHESTER'S FINEST SERVICE

WESTCHESTER FEDERAL SAVINGS
AND LOAN ASSOCIATION

NORTH AVENUE AND HUGUENOT STREET • NEW ROCHELLE, N. Y. 10802 • 914 636-6400

82-a

May 21, 1971

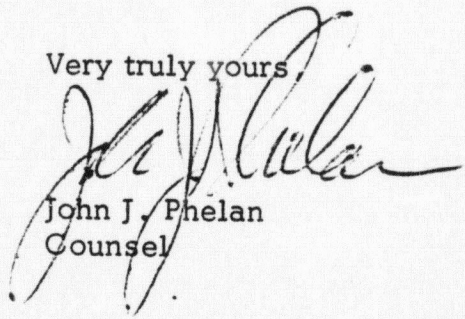
Mr. William C. Stevens
Assistant Vice President
Hartford National Bank and Trust Company
36 Atlantic Street
Stamford, Connecticut 06904

Re: Savings Account No. 450,964
Hyde Park Company
Loan No. 6058
G. S. C. Partnership

Dear Mr. Stevens:

I am returning herewith the receipt of the Notice of Pledge
of the above savings account consisting of security rents under
leases.

Very truly yours,


John J. Phelan
Counsel

JJP:sh

Enclosure



SCARSDALE OFFICE:
24 CHASE ROAD • SCARSDALE, N. Y. • 723-6633

NORTH END-WYKAGYL OFFICE:
NORTH AVE. AND QUAKER RIDGE RD. • NEW ROCHELLE, N. Y. • 636-5500

THE MALL AT NEW ROCHELLE
235-9000

YONKERS OFFICE:
403 SO. BROADWAY • YONKERS, N. Y. 423-7500

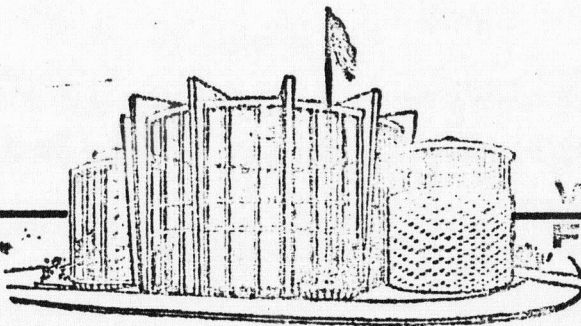
EXHIBIT 4



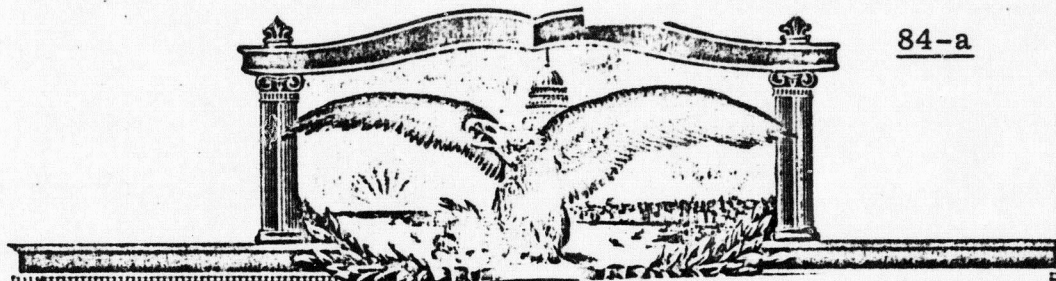
WESTCHESTER
FINEST
SERVICE

83-a

WFS



WESTCHESTER
FEDERAL SAVINGS

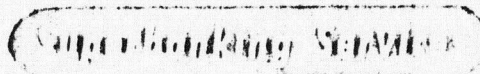


WFS SAVINGS ACCOUNT

You are now the proud owner of a savings account at Westchester Federal Savings. All funds deposited by the tenth day of any month will earn interest as if deposited on the first day of that month. This account gives you flexibility of deposits and withdrawals with the safety of insurance coverage by a permanent agency of the United States government and is subject to the provisions of Section 545.3-1(h)(2) of the rules and regulations of the Federal Savings and Loan System. When ninety days written notice of intention to withdraw is given, you will earn interest to the day of withdrawal. Interest is credited and compounded automatically at each regular distribution date. Should the balance fall below the minimum required amount of fifty dollars, this account will revert to the status of a regular savings account.

THIS CERTIFIES THAT the account owner holds a savings deposit in Westchester Federal Savings and Loan Association subject to its charter and bylaws, the rules and regulations for the Federal Savings and Loan System, the laws of the United States of America and the rules established by the Association's Board of Directors for this deposit classification.

SAVINGS ACCOUNTS ARE INSURED by the Federal Savings and Loan Insurance Corporation, a permanent agency of the United States Government. One person may have insured savings well over \$20,000 . . . a husband and wife may have five savings accounts, each one being fully insured (two individual accounts, one joint account and two trust accounts). In like manner, a family of three may have insured savings totaling \$200,000 and a family of four may have insured savings totaling \$280,000.



- ★ Banking daily to 5 P.M. at all offices
- ★ Open Saturdays in Mall Office
- ★ Evening banking at all Offices
- ★ One account book usable at all offices
for deposits and withdrawals

- ★ On-site parking
- ★ Drive-up banking *
- ★ Safe deposit boxes *
- ★ Free meeting rooms *

* Located at Home Office and available to all customers

NAME(S) HYDE PARK COMPANY450,964MOC/O HERBERT STOLL85-a

	DATE	WITHDRAWALS	INTEREST	DEPOSITS	BALANCE
1	APR 12-71			538,265.00	*38,265.00
2					
3	JUL 18 th	JUN 1971	**286.99		*38,551.99 * Y
4					
5	JUL 18 th	DEC 1971	**867.40		*39,419.39 * Y
6					
7	JUL 18 th	JUN 1972	**886.93		*40,306.32 * Y
8					
9	JUL 18 th	DEC 1972	**906.89		*41,213.21 * Y
10					
11	JUL 18 th	JUN 1972	**927.29		*42,140.50 * Y

WHERE YOU HAVE DONE MAKE A DIFFERENCE

12					
13	JUL 18 th	DEC 1973	*1,000.82		*43,141.32 * Y
14					
15	JUL 18 th	JUN 1974	*1,078.52		*44,219.84 * Y
16					
17					
18					
19					
20					
21					
22					
23					

The Savings Account Loan permits you to borrow up to 90% of the balance in your account at a low net cost. You simply sign a note, receive your cash loan immediately, and your undisturbed savings continue to earn interest.

WESTCHESTER FEDERAL SAVINGS



Security...



LOOK FOR THIS EMBLEM . . . it is your assurance that savings here are protected by: (1) The security of first mortgage loans on homes and other assets including cash. (2) Sound, progressive operating policies administered by experienced local management. (3) Continuous supervision and periodic examinations by governmental authorities. (4) Insurance on your savings up to \$20,000 by the Federal Savings and Loan Insurance Corporation, a permanent agency of the U. S. Government.

Regular savings accounts
Special savings accounts
Savings account certificates
Payday savings plan
Christmas, Vacation and Chanukah clubs
Personalized money orders
Travelers checks and Foreign Drafts

A STRONG RESERVE SYSTEM composed of twelve regional Federal Home Loan Banks provides additional liquidity for member associations. The Federal Home Loan Bank System is supervised by the Federal Home Loan Bank Board which is appointed by the President of the United States with the advice and consent of the Senate.

NO ONE HAS EVER LOST A CENT in insured savings accounts in America's FSILIC Insured Savings and Loan Associations.

Loans on Savings Accounts
Colorful gift checks
Coin sorting, counting and wrapping
Utility bill payments accepted
Notary Public service
Redemption, release & sale of Savings Bonds
Purchase and sale of stocks and bonds

OFFICES AND HOURS

- HOME OFFICE:
North Avenue at Huguenot St., New Rochelle, N. Y. - NE 6-6400
8:30 A.M. TO 5 P.M. DAILY 6 TO 8 P.M. THURSDAY EVENINGS
- NORTH END - WYKAGYL OFFICE:
North Ave. at Quaker Ridge Rd., New Rochelle, N. Y. - NE 6-5500
8:30 A.M. TO 5 P.M. DAILY 6 TO 8 P.M. FRIDAY EVENINGS
- SCARSDALE OFFICE:
24 Chase Road, Scarsdale, N. Y. - SC 3-6633
8:30 A.M. TO 5 P.M. DAILY 6 TO 8 P.M. THURSDAY EVENINGS
- THE MALL IN NEW ROCHELLE:
Upper Mall — Main Shopping Level - 235-9000
9:45 A.M. TO 5 P.M. DAILY 6 TO 8 P.M. THURSDAY EVENINGS
SATURDAYS (MALL OFFICE ONLY): 9:45 A.M. TO 5 P.M.

EXHIBIT 5

WITHDRAWAL ORDER

DATE 1/15/74PLEASE WITHDRAW FROM SAVINGS ACCOUNT NUMBER 150,964 M.O.
THE FOLLOWING AMOUNT:Full accountDOLLARS \$ 44,219.84
AMT IN FIGURES

SIGNATURE:

Hubert Stoll
WRITE SIGNATURE(S) AS IN PASSBOOK

ADDRESS:

NUMBER AND STREET

CITY

STATE



IF CHECK IS DESIRED, WRITE NAME(S) TO APPEAR ON CHECK

WESTCHESTER FEDERAL SAVINGS

88102-100N-RVL-3-71

PLEASE DO NOT WRITE IN THIS SPACE

CASH _____

PERSONAL MONEY ORDER # _____

CHECK # _____

TELLER STAMP _____

EXHIBIT A

FIDUCIARY ACCOUNT

450,964

Account No.

(1) **HYDE PARK COMPANY (RENT SECURITY ACCOUNT)**

Mr. (To be typed)
Mrs.
Miss

Mr. (To be typed) (Last Name) (First Name) (Middle Name)
Mrs.
Miss

As Executor(s) of the Will ☐ As Administrator(s) of the Estate ☐ As Guardian(s) of the Person and Property ☐
As Trustee(s) under the Will ☐ As Trustee(s) under Deed of Trust ☐ As Landlord with security rents of tenants ☐
under lease ☒ As Employee ☐ As Representative Payee under S.S.A. ☐ As

I, the undersigned, whose specimen signature appears below, hereby apply for a Savings Account in WESTCHESTER FEDERAL SAVINGS AND LOAN ASSOCIATION and agree to be governed by the Association's charter and by-laws. It is agreed that all transactions relating to the account shall also be governed by the terms on the reverse side hereof. (over)

Signature (1) **C/O HERBERT STOLL**
Street Address **125 STRAWBERRY HILL AV** City State Zip Code

Signature (2) *[Signature]* As Fiduciary (1) as aforesaid
Street Address City State Zip Code

Counter-signature or Court Order Required
Dated **APR 12 1973**

EXHIBIT B

WATCH

89-a

RENT SECURITY ACCOUNT

NAME HYDE PARK COMPANY

C/O HERBERT STOLL

ACCT. NO. 450,964MO

ADDRESS 125 STRAWBERRY HILL AVE.

DATE 4/12/71

STAMFORD CONN.

CO-SIGNATURE OF MORTGAGE DEPT. REQUIRED NO WITHDRAWALS

	DATE	WITHDRAWAL	DIVIDENDS	PAYMENTS	BALANCE
1	APR 12-71	NEW			
2			286.99	538,265.00	*38,265.00
3	JUN 28-71		***286.99		*38,551.99
4	DEC 28-71		867.40 ***867.40		*39,419.39
5					
6					
7					
8					
9					
10					
11					
12					

WESTCHESTER FEDERAL SAVINGS AND LOAN ASSOCIATION

13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					

SIGNATURE
SIGN HERESIGNATURE
SIGN HERE

BALANCE, INC.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

HARTFORD NATIONAL BANK AND TRUST
COMPANY

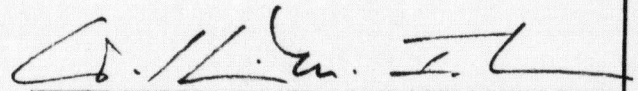
VS.

D.N. 77-7007

WESTCHESTER FEDERAL SAVINGS AND
LOAN ASSOCIATION

CERTIFICATE OF MAILING

THIS IS TO CERTIFY that a copy of the Joint Appendix
in the above entitled action was mailed on the 7th day of
February, 1977, to Victor N. Pacor, Esq., of Pacor & Del Vecchio,
56 Harrison Street, New Rochelle, New York 10801, attorney
of record for the Defendant, Westchester Federal Savings and
Loan Association, by United States Mail, postage prepaid.


William M. Ivler